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A
T R E A T I S E

O N

The Court of Exchequer:

I N W H I C H

The Revenues of the Crown; the Manner of receiving and accounting for the several Branches of them; the Duty of the several Officers employed in the Collection and Receipt; the Nature of the Processes for the Recovery of Debts due to the Crown; are clearly explained: as also occasionally, the Nature of the feudal and other antient Tenures; the Origin of Parliaments, Conventions, the several Courts of Justice; and many other curious and useful Particulars, are shewn.

By a late

Lord CHIEF BARON of that Court.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's most Excellent Majesty; for J. NOURSE, at the *Lamb*, opposite *Catherine-Street*, in the *Strand*. MDCCLVIII.



The Court of Exchequer

IN WHICH

The Revenue of the Crown; the manner of
receiving and accounting for the several
branches of them; the duty of the several
Officers employed in the Collection and Re-
ceipt; the Nature of the Warrants for the
Recovery of Debts due to the Crown; the
claims explained; as also occasionally, the
Nature of the feudal and other ancient Re-
venues; the Origin of the several Customs;
the several Courts of Justice; and
many other curious and useful particulars
are shown.

By a late Lord Chief Baron of that Court

In the 217th
Printed by Henry Lint, at the Law-Printer to the
King's most Excellent Majesty for London and
at the Fleet, opposite Capten-Gunn's, in the
Street. MDCCLXXIII.

P R E F A C E.

THE following Work, together with a Treatise on Rents, was sent to the Editor, by a Person of very high Rank in the Law, in order to their being published; on the Presumption, they might be well worth the Notice of the Publick, as well on the Score of the useful as curious Matter they contain. Assurances were at the same Time given, that they were the Works of the late Lord chief Baron *Gilbert*: and there are other Circumstances, which leave no Room to doubt of the Truth of this Assertion. It appears, from Manuscripts now extant under his Lordship's own Hand, he had

undertaken to write a general History of the Courts of *Justice*: and there is sufficient Reason to conclude, from the Correspondence betwixt some of the Heads of that Work, which are among his Manuscripts, and the several Contents of this Tract, it was originally written as a Part of such general History. It were much to be wished, he had lived to complete the Execution of his Design; as the extensive Knowledge he has displayed, both of the antient History, and the modern Practice of the Law, with a Manner of writing uncommonly succinct and intelligible, give the strongest Reasons to believe, his Work would have been of great Utility to those who may have Occasion to study the *English* Law on fundamental Principles. Though this larger Design was

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was however left uncompleted, yet there were certain Parts of it which his Lordship had gone through, and left in Manuscript: some of them seem executed in a Manner, that renders them not much less useful, as far as they extend, than if they had been compiled, with the other Matters, in the intire Work: and of these this Tract may be justly deemed one, when its Contents are duly weighed. The full and clear Account of the Duty of Sheriffs, which it contains; as well with Respect to the collecting and levying those Branches of the Revenue of the Crown, which fall within their Office, as the accounting for them in the Exchequer; cannot fail to be useful; as it is more amply and explicitly treated of here than in other Books. The Enumeration

and Explanation of the several Processes for the Recovery of Debts due to the Crown, must be also very acceptable; as well to those concerned for the Crown, as to those, who may be Defendants against such Processes. Besides these, and many other curious and interesting Particulars, the Nature of the feudal Tenures which have prevailed in *England*, and the Original and Constitution of the Parliament, Convocation, &c. are likewise treated of; in a Manner which, though more simple and concise, is not less satisfactory and convictive, than that of some other more pompous and seemingly elaborate Works: and there are several Points respecting them settled here on a much sounder Basis, than they appear to be in the
last

last Book which has been published on this Subject.

The seeming great Brevity arises mostly from the sparing Use of Authorities, and the touching frequently by Intimation only on the Reasons for the Opinions advanced. But the Authorities produced, are nevertheless, for the most Part, so conclusive, that they render any others wholly needless: and there is such a Consistence betwixt the Parts of the System, as makes it unnecessary to expatiate, where they occur in this Work, on the Certainty of many Particulars, on Account of their being natural and unquestionable Deductions from others sufficiently proved; though taken in a separate Light, they might demand some Demonstration.

It must be acknowledged, that this Treatise does not appear to

have had the last finishing ; or to be correct in a Proportion to the great Abilities of the Author. It seems, indeed, to be a Collection of Matter digested only in a general Method ; and not distributed into that nicer and more elegant Order, to which his Lordship most probably intended, had he lived, to have reduced it before its Publication. But this Defect will not in any material Degree impair the Utility of the Work. The Disposition of the Parts is at present such, as renders the whole coherent ; and easy to be understood : and the Reader, at least on a second Perusal, will easily adjust, in his own Conception, the Irregularities of Place of any Passages that may be less accurately disposed. All the Errors indeed of this Kind, that are found in it, are
more

more the Objects of a critical than a practical Judgment on the Book : and ought therefore to be overlooked in a Work, the End of which was the informing the Understanding, and not the pleasing the Taste: and, in this View, there is scarcely any Ground to doubt, but that this little Treatise, even in its present State, will be found equally valuable, on the Account of the great Copiousness of the most useful, as well as curious, Matter, with any other *English* Law Tract ever before published.

To this Work is however added an Appendix, containing two Tracts ; the one on the *Customs* ; and the other on the *Excise* ; which were sent in order to their being published along with it. They both supply Particulars very advantageous

geous to be known, to all who have any Concern in those Branches of the Revenue; and of which nevertheless it is very difficult to procure any Information. The Reason for joining them, as a Supplement to the preceding Work, is obvious; since they furnish Part of that Matter, which a further Continuation of it would have contained; and illustrate, as well as augment, the proper Contents of the Lord Chief Baron's Tract. It is hoped therefore the annexing them will be approved, as well on Account of the Affinity with it, as their own proper Merit.

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O F

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of the Court of Exchequer; and oc-
casionally, of the Aula Regis; the
Courts of Chancery, King's Bench,
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Containing an Account of the Method of charging and collecting the Duties of Excise; and of the Names and Business of some of the Officers employed therein.

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THE
C O U R T
O F
EXCHEQUER.

C A P. I.

Of the Origin and antient Jurisdiction of the Court of Exchequer; and occasionally, of the Aula Regis, and the Courts of Chancery, King's Bench, and Common Pleas.

THE *Exchequer* was the ancient and sovereign Court in *Normandy*, to which they appealed from all inferior Courts and Jurisdictions; it being the grand Court of the Duke.

B

There

The Court of Exchequer.

Basnage, Tit.
Jurisd. fo. 20.
Derivation of
the Word
Exchequer.

There is very great Difference among the Antiquaries touching the Name. *Basnage*, in his Customary of *Normandy*, derives the Word (*Exchequer*) from the German Word *Skecken*, which signifies to *send*, because this Court was composed *de Missis Dominis*, or of such Great Lords as were particularly sent for, to hold Court with the Seneschal or Steward, on any Occasion.

Maddox 109.
Spelm. Gloss.
Tit. Scaccar.

The more common Derivation of the Word (*Exchequer*) is from a Chequer'd Board or Chess Board: They called the Board on which they played at Chess a Chequer, because in that Game they give Cheque; and this Court was so called, because they laid a Cloth of that kind upon the Table upon which the Accountants told out the King's Money, and set forth their Account, in the same artificial Manner as in the Cofferer's Account is done at this Day.

1 Godf. 228.
Terraine 50,
60, 61.
Jurisdiction of
the antient
Norman
Exchequer.

This Court in *Normandy* was the sovereign Jurisdiction, and superintended all Manner of Complaints from the Bailiffs or Sheriffs, for the Sheriffs or Bailiffs exercised the ordinary Jurisdiction in each Bailiwick thro' the whole Dutchy of *Normandy*; their Duty was to gather the Duke's Rents in each Bailiwick, and to account for the same in this Great Court:

Here

The Court of Exchequer.

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Here likewise they heard all Manner of Complaints against them, and their Sentences were final.

This Court was composed of such Barons, Bishops and Abbots as held immediately of the Duke, and were occasionally sent for to attend the Prince; and they were called in by a Summons, according to the Duke's Pleasure; and such as were so called attended the Duke's Steward, in taking an Account of the Bailiffs, and hearing Complaints against them.

Basnage 2, 3.
Great Officers
which composed it.

Terraine says there were two Sorts of Jurisdictions, (that is to say) *Fieffal*, and *Baillée*.

Jurisdiction
Fieffal and
Baillée.

The *Fieffal* is the Feudal Jurisdiction by reason of the Fief, (that is) where the Feudal Lord had Power to do Right to his Tenants upon any Complaint or Quarrel; and this reached as far as the Bounds and Extent of his Manor, and to all Quarrels which were moved between the Residents there.

Terraine 54.

The Jurisdiction *Baillée* is well defined by *Terraine*, (*Est celle qui est baillée a aucun de par le Prince, ou de par le Seigneur, a qui elle appartient:*) This was the ordinary Jurisdiction which was delivered over to the Sheriff in every County.

The Office of a *Bailiff* is thus described: He is called the *Justiciar of the*

Terraine
59, 60.

Office of the
Bailiff or Ju-
sticiar of the
County.

The Bailiff
and Sheriff
antiently the
same.

Terraine 48.
Antient Cu-
stumier, c. 56.
fo. 47.

Masters of the
Exchequer.

Conformity
between the
antient Exche-
quer of Nor-
mandy, and
that of Eng-
land.
Who sat in
them.

County, and established by the Prince or Duke to do Justice and Right to the People which is submitted to him;—to guard the Peace and decide all Quarrels;—destroy Rogues, Homicides, the Burners of Houses, and other Malefactors;—to guard the Rents of the Duke and to get them in;—and to deliver back the Pledges that are taken by Wrong, and to remove the Force.

It is plain by this Description, that the Bailiff and Sheriff were anciently the same, and that the Sheriff had the ordinary Jurisdiction within the County: Tho' afterwards they appointed Lieutenants and Bailiffs of Counties, distinct from the Sheriff: But certain it is, that the highest Justices were those which they called the *Masters of the Exchequer*, and who are now at this Day called *Presidents* and *Councillors* of the Court of *Parliament*; and to them it appertained to amend what the Bailiffs or lesser Justices had misdome, and to call in all Things that were withheld from the Prince.

It is doubted whether the *Exchequer* in *Normandy* was formed from the *Exchequer* in *England*, or that of *England* from *Normandy*; certain it is, that they are very like one to the other: All the great Ministers, as the Justiciar, Constable, Seneschal,

The Court of Exchequer.

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neshal, Chancellor, and Treasurer, sat in this Court, and such other Barons as were occasionally resident or sent for: And as the greatest Part of the Baronage were summoned to Parliament, which was the most eminent Court; so some few were summoned to the *Exchequer*, which was the Court for the private Concerns of the Crown; and therein the Matters of the Common Revenue were first dispatched:

There all the Complaints were heard against the Crown Officers, which was the Original of the Writs of false Judgment; but this afterwards was turned into another Channel: For the Complaints against the Officers were so many and so great, and the Profits arising by Suits of Law began to increase so much, that they confined the ordinary Jurisdiction of the Sheriff to the Sum of 40*s.*; and wheresoever it was above that Sum, they were obliged to take out the King's Writ; either returnable before his own Justiciar in Court, or they took out a Justicies, returnable before the Ordinary Jurisdiction in the Country; and the Fine was paid for the Original according to the Value of the Thing in Demand; and in that Proportion the Amerciament was set at the Judgment: And hence it was that the She-

Matters under their Conu-
fance, and
Origin of the
Writs of false
Judgment and
Justicies.

4 Co. 266.

Fines and
Amerciaments
87, 88.

riff might proceed upon a Justices, altho' the Sum was more than 40s.

Rise of the peculiar Jurisdictions of the Courts of Chancery, Exchequer, King's Bench and Common Pleas, out of the Jurisdiction of the *Aula Regis*.

Toward the latter End of the *Norman* Period the Power of the Justiciar was broken; so that the *Aula Regis*, which was before one great Court where the Justiciar presided, was divided into four distinct Courts: (that is to say)

The Court of *Chancery*, and

The *Exchequer*,

The Court of *King's Bench*, and

The *Common Pleas*.

Originals and Criminal Process, how issued and returned.

The Court of *Chancery* issued all Originals, whether in Relation to the Revenue or to Civil Justice; for the Chancellor, before the breaking of the Courts into distinct Jurisdictions, had the Custody of the Seal; and therefore issued all Originals, returnable before the Justiciar: Afterwards, when the Jurisdictions were distinguished, the Originals relating to Civil Pleas were returnable before the Justices of the *Common Pleas*: But the Originals in Trespass might be returnable into either Court; because the Plea was Criminal as well as Civil. But the *King's Bench* themselves made out the Process in criminal Matters; for in this they shared with the Power of the Chancellor: That the Chancellor was to be the Foot and Basis of the Civil Jurisdiction; but the Criminal

The Court of Exchequer.

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nal Jurisdiction was retained *Coram Justiciariis de Banco*.

The Chancellor puts the King's Seal to all Patents, which were the Foundation and Basis of the certain Revenue: But when any Patents were sealed, they were estreated into the *Exchequer*, and the Execution issued out of the Court of *Exchequer* for all Reservations on such Patents: For as the *Chancery* was a Cheque upon the Civil Justice, by issuing Originals; so likewise it kept the Foot and Foundation of all the certain Revenue of the Crown: And as the Originals of the *Chancery*, touching Suits, gave the Foundation for the casual Revenue of Fines and Amerciaments in such Suits, which were to be estreated into the *Exchequer*; so likewise, the original Patents in the *Chancery* were the Foundation of the certain Revenue of the Crown, which was estreated into the *Exchequer*, in order to be there gathered and paid in. Likewise all Fines upon Crimes, in the Criminal Court of *King's Bench*, were to be estreated into the *Exchequer*, in order to levy such Fines: Or if they were levied, they were yet to be estreated, in order that the Clerk of the Crown might account for such Fines received, in the Court of *Exchequer*: For on the criminal Side, if the Parties were in Court, they might

From whence the certain and casual Revenues arose: And what Jurisdiction each several Court had to levy them.

The Reason for abolishing the Aids Re- gis. and breaking up several Offices into distinct Courts.

commit them for the Fine, since their Bodies were liable, and so they might issue a *Capias* to bring in their Bodies to answer the Fine; for, on the criminal Side, the Bodies of Offenders being in Court, or being presumed to be out upon good Bail, in order to answer such Fines as should be set upon their Offences, the *King's Bench* had Jurisdiction over the Body, in order to get in such Fine; because the Body was in Court, or a Security to bring in the Body: And if such Fines were answered to the Court, they were to be totted by the Clerk of the Crown in the *Estreats*; but where they were not received by the Clerk of the Crown, they were to go in Process, in Manner hereafter mentioned.

The Reason
for abolishing
the *Aula Re-*
gis, and
breaking its
several Offices
into distinct
Courts.

The *Aula Regis* was one Court, distinguished by several Offices, as long as the Power of the Justiciar continued; for all the Offices were united under the Justiciar, and he was the Governor or Superintendent of the Court: But from their Experience of what had been done in *France*, they thought it proper towards the End of the Barons Wars, to lay aside the Justiciar: For in *France*, *Pepin* and *Hugh Capet*, (who were both Justiciars,) by their mighty Power that they had by their Superintendence in Court, got into the Throne, and displaced the Possessors thereof;

of; therefore, in *England*, when they had laid aside the Justiciar, the several Offices were, by *Edward* the First, broken into distinct Courts: And the great Officers were so placed as to be a Cheque one upon the other; therefore the Chancellor made out the original Writs, and the Justices of the Bench proceeded thereon to Justice and Execution; so that the *Chancery* was a Controul upon the *Common Pleas*, and likewise upon the Justices in *Eyre*; for they could proceed no further than the King's Writ gave them Authority. Indeed, the *King's Bench* had the sovereign Jurisdiction in criminal Matters, but that was ambulatory with the King, and had no Cheque nor Controul but from the King himself: for the only Controul of Justice was the Mercy of the King. But in all foreign Counties there was no original Jurisdiction of the *King's Bench*: But there were Justices in *Eyre* appointed, and afterwards Commissions of Oyer and Terminer and General Gaol Delivery, to dispatch the Business in all foreign Counties; so that on the criminal Side there could be no Cheque or Controul but the King himself: But in the Matters of the Revenue, the Chancellor and Treasurer had the Cheque and Controul upon one another; for the Chancellor

The Manner in which the several Courts, (by the Policy of *Edward* the First) were constituted to be a Cheque on the Jurisdiction of each other in Matters of Revenue.

cellor was appointed to make out all Grants and Patents of Lands and Tenements, for no real Estate of Land was to be parted with by the Crown without the Great Seal; but then, the Rents of such Tenures were to be accounted for before the Treasurer: And so he, by Patent, was to grant all real Offices, but such Officers were Accomptants at the Court of *Exchequer*: The same Sort of Cheques were carried on by *Edward* the First in the Court of Parliament; for the House of Commons was designed as a Cheque to the Power of the Lords.

C A P. II.

Of the antient Revenues of the Crown; and the several Branches which composed them: And how they were levied, accounted for, and paid into the Exchequer,

TO understand the Revenue and Business of the ancient *Exchequer*, it is necessary to consider, that the Revenue antiently arose from the Lands and Tenements granted by the King, and they were either *Terræ Dominicales* or the *Demesne Lands*, and are so mentioned in *Domesday Book*, under the Title of *Terræ Regis*; or Lands held by *Knights-Service*. These Demesne Lands antiently were to maintain the King's Table, and the Tenants of them had their Living out of the King's Land, rendring their Corn, Sheep, Oxen, and other Produce of the Land itself to the King: But because this was cumbersome to deliver in Specie, they came afterwards to another Method, which was by Assessment of those Demesne Lands according to the Value and Produce of these Lands and the King's Necessities; and this Tallage was settled by Justices, who went by the

From whence the royal Revenue antiently arose.

Of the Antient Demesne Lands of the Crown, and the Revenue arising from them.

Tallage how assessed.

the

Privileges of
the Tenants
of the Antient
Demefne
Lands.

The feveral
Kinds of Tal-
lage, and the
general Man-
ner of collect-
ing them.

Of the Firmæ
Majores &
Minores,

the King's Orders, and overlooked fuch Lands, and made the Affeffments: And therefore the Title is, *De Tallagio Domini-
norum Regis per Galfridum de Lucy &
Socios suos*; frequent Examples of this are to be met with in *Maddox* 483, 4, 5. These Tenants, being the King's Villains, were thus taxable by his Juftices, but were free from all Suit and Service to any Court whatfoever, that they might mind the Bu-
finess of Husbandry, and be the better able to fupply the King: These Supplies were called *Gifts*, *Dona Affisæ*, but most frequently *Tallagium*, and were of two Sorts; first, what were gathered by the Sheriff; and fecondly, fuch as were ga-
thered by other great Persons that had many of them in their own Hands, and therefore paid them in themselves into the *Exchequer*, and there received their Ac-
quittances; fuch were the Tallages of the Cities, who appeared in the *Exchequer*, and accounted in Person. But the other Manors that were difperfed in the Coun-
tries, as it appears by *Maddox* 519, were accounted for by the Sheriff; for none were tallaged but Antient Demefne, and other Demefnes and Burroughs holding of the Crown. *Maddox* 520.

These made up the *Firmæ Majores* and the *Firmæ Minores*, that were after the
Time

Time of *Edward* the First accounted for and how they
by the Sheriff; and, in Proceſs of Time, were account-
they made a Bargain at the *Exchequer*, to ed for and
account with the King for a certain Rent paid.
inſtead of the Tallages; and then they
were never taxed by Parliament but for
the 10th and 15th of their Personal
Eſtates. But they answered their Rents
at the Receipt of the *Exchequer*, as they
were particularly charged upon them, or
eſe answered them to the Sheriff: If they
answered them to the Sheriff, he took
them and totted them: If to the *Exche-*
quer, they had a Receipt from the *Exche-*
quer Chamberlains, and afterwards ſigned
by the Auditor General (when that Office
was erected). The Sheriff was o' ni'd on
his Account, and ſhewed the Book of the
Clerk of the Pells in his Diſcharge. The
Summons of the Pipe got in theſe Tal-
lages, and afterwards the Rents with the
other Debts of the King; and if any of
them had Under Tenants, as it was uſual
in Manors, they had Diſtringas's out of
the *Exchequer*, to raiſe the Tallage from
their Under Tenants. *Maddox* 517.

Theſe Lands, whiſt under Tallages, The Reaſon
which was the antient Way of the King's why Tallages
taking the Profits of them, were capable were changed
of no Improvement; becauſe whatever Im- into Rents
provement was made of the Lands, the Tal- certain.
lage

lage, which was assessable at Pleasure, was set so much the higher; and it therefore became the Interest of the Crown to set them at certain Rents, that so they might improve their own Land to the utmost.

Of Tenure in Socage, and how differing from Tenure by Knights-Service.

These Demesne Lands belonging to the Sockman or Plowman, were afterwards called Tenure in Socage, in Contradistinction to Tenants by Knights-Service; and when there was a certain Reservation of Rent, it was a Mark of a Tenancy in Socage: But of Knights-Service the Demands were casual and uncertain: And afterwards several Manors, not Antient Demesnes, that escheated to the King, were granted out in this Manner, at a certain Rent: The Socage Tenures were consequently much more large than the Antient Demesne.

Of the Origin of Burroughs, and Tenure in Burgage.

The Nature of Burgage Tenure; and the Revenue thence arising; and how collected, accounted for, and paid.

The King not only gave Lands to the Tenants in Antient Demesne, for his Provision, but likewise several of the Demesne Lands were given to Burroughs, for the cloathing his Household. The Demesnes granted for Provision were given to single Persons, that carried on the Tillage by their Sub-tenants and Servants; but those granted in Burgage were granted to Corporations, from whence it came to be a Notion, that a Corporation could not be erected without a Charter from the King; and

and these Charters contained, not only an Erection of that Body by a certain Name, but also a Donation to them of certain Lands, to hold of the King, by providing Cloth for his Household, or importing Silks, or other foreign Manufactures: But these Manufactures, at last, were not given to the King in Specie, but instead thereof the King's Commissioners imposed a Tallage, which was sometimes paid in by the Corporations themselves; and if not, was collected and paid in by the Sheriff, and he charged in his Account with it. *Mad-dox* 483, 487.

The second Sort of Lands were those that were held by *Knights-Service*: There was no certain Sort of Profit arose from these, for they were not for the King's Provision but his Defence.

Of the King's Lands held by Knights-Service, and the Revenue arising from them.

These were, to attend the King in Arms, according to the Array that was made on every Expedition; and whoever failed in coming, or rendering his *Quota* of Men, according to his Tenure; his Lands were originally liable to be seized into the King's Hands for not doing his Duty: Afterwards this Seizure was changed into an *Escuage* or a *Fine*, according to the Degree of his Failure: As if he failed one Knight, then for one Knight's Fee: But if he sent, instead of personally appearing,

Of the Origin and Nature of Knights-Service.

Coney Methodus de Feud. 164.

Of the Origin and Nature of Escuage, and the Manner of assessing it.

ing, he made a Composition with the King, for not attending in Person, but sending others; if he did not come at all, he was seised for all the Lands he held, but had no Escuage from his Tenants; but if he came, and there was a Deficiency in any of his Tenants, he had Escuage from his Tenants: This was an Inducement for every Person to come or send, because he had no Escuage at all unless he were there or sent, so that all the Escuage fell on him, and he had no Aid over.

This Escuage came to be assent, by Authority of Parliament, after the military Expedition was ended; and so much was assent upon every Knight's Fee: So that if he that held *per Baroniam* came with all his Knights, he was excused; if he came with only Part of his Knights, the Escuage was assent in Proportion to the Default of such Knights; and such Baron appearing had Remedy over upon all Fees held of him: And, according to the Mode of that Time, all Barons had many Knights holding of them, in order that they might be sure to attend with their *Quota*, for it was a Dishonour to come without them. And wherever Escuage was assent on the King's Tenants, making Default, there the Baron, appearing in the Host, had Escuage on his own Tenants that made Default.

Default. It was a general Rule of the General Rule touching the Payment of Escuage. Feudal Law, *that the Prince never had Escuage unless he went to the War in Person*, because the *Tenants in Capite* were only obliged to attend *their Prince*; and so the *Tenants* of inferior *Lords* were not originally obliged to attend, unless the *Lords* were there *in Person*: But it soon became a Practice, after the Conquest, that they might *excuse* or *essoin* their Attendance, and attend by Deputy.

The *Essoins* were of two Sorts, either Of Essoins. *Spiritual* or *Temporal*. The *Spiritual* Spiritual Essoins. *Essoin* came in after the Conquest; when spiritual Persons were obliged to hold of the King *per Baroniam*: for such spiritual Persons could not attend in the Wars; and therefore they were forced to find Deputies for that Purpose; and these Deputies upon the Muster of the Host were allowed.

The second Sort of *Essoin* was *Temporal*, which was Sickness; when the Temporal Essoins. Tenant of the King was ill and languishing; then likewise he might appoint his Deputy; and those Deputies, upon such Excuses admitted, were inrolled in the Host, as if the Tenant had served in proper Person.

The Certificate of the Marshal of the King's Host, inrolled in the Exchequer, a Discharge from Escuage.

At the Muster of the King's Host, the *Marshal* gave a *Certificate*, under his Hand and Seal, to all the Tenants that there attended; which was an uncontroverted Evidence, of their attending the King in his Expedition, when Escuage was assessed upon the Tenants in Parliament: For every Tenant might bring his Certificate into the Court of *Exchequer*; and upon such Certificate, the Barons discharged him out of the King's Rent Roll: For such Certificate of the Marshal, inrolled in the Court of *Exchequer*, was an Authority to the Barons to discharge the Pipe Roll of any Escuage upon such Tenant, that so no *Distringas* might issue for such Escuage: If the King's Tenant had not inrolled his Certificate, then the *Distringas* regularly issued; but the Tenant might plead such Certificate at the Return of the *Distringas*, and get his Discharge: But however, the *Distringas* did originally issue regularly, because he had not inrolled his Certificate. Where it was *inrolled*, it was never in Charge to the Sheriff; where it was *pleaded* upon the Return of the *Distringas*, the Sheriff was *o' ni'd*, till such Certificate was produced. If an inferior Tenant was distrained by his Lord for Escuage, he might

If no Certificate inrolled, a *Distringas* issued.

Lit. sect. 102.
Co. 1 Inst. 74.

might replevy; and if, upon the Replevy, he could plead that he was with the King in the Expedition, and show his Certificate from the Marshal, the Tenant might have a Recordare of such Plaint before the Sheriff, and thereby bring it before the Justices in Eyre; and upon producing of such Certificate before the Justices, the Justices granted a Writ *de retorno habend'* of such Distress.

The Method of levying Escuage by inferior Lords on their Tenants.

To every one of these Expeditions, the Tenants in Antient Demefne, and Bur-
Aid, before the Expedition begun; or the King tallaged them after the Expedition was ended, the more was granted in Aid, the less was expected in the Tallage; and generally it was a 10th or 15th; for higher they never went; and therefore Escuage certain is called Socage; because the Socage Tenants were always taxed in a Sum certain, *viz.* a 10th or 15th upon their Goods, in an Expedition: The Justices Itinerant, before every Expedition, went about, to the several Tenants in Antient Demefne, and to the Burrough-holders, in every County within their District; and there they demanded an *Aid*; which was in the Nature of a Gift or *Auxilium* towards the King's Expedition.

Of the Nature of Aids and Tallages.

Socage is Escuage certain, *viz.* a 10th or 15th of Goods.

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Decimation
on Nonpay-
ment of Tal-
lage.

Expedition. If they would not give at the End of the Expedition, the King might tallage to a Tenth; - but not to more, towards such Expedition. This was absolutely necessary for the Provision of the King's Host; for the King was obliged to find his own Table during the Expedition; and that could not be done without an Aid, or without contracting a Debt; and when the Debt was contracted, the Tenants in Socage were bound to contribute, as far as a Tenth of their Movables, towards the discharging of the King's Debt; and then the King and his Council sent for the City of *London*, and demanded a certain Sum in Tallage; and if they refused, then the King and his Council ordered them to be decimated, towards the Discharge of the King's Debt; and upon the Decimation, they were obliged to swear to the Value of their Goods: And of this see a notable Record in *Maddox* 491. And here it is to be noted, that after such tallaging of the Metropolis, the Justices in Eyre went thro' their proper Circuits, and tallaged all the King's Tenants in Antient Demefne and Burgage Tenants; and when the Expedition was prosperous, they

they were freer in demanding the Tallage.

When any Aid was given, or any Tallage was asselt by the Justices upon any City, Town or Burrough, the Justices Itinerant returned such Aid or Assessment out of their several Iters, to the *Justiciarii residentes* in the *Exchequer*; and from thence the Sum was transferred into the Pipe Roll, and a *Distringas* issued to the Sheriff; and upon his Appeal he was to render an Account of the same, so charged upon him.

In what Manner Aids were given by, and Tallage assessed on Cities, Towns and Burroughs; and how levied and accounted for.

As the King gave Lands to Towns, so likewise to several Companies within Towns; as in *London*, where the Tallage was asselt on the Alderman of each Ward, who was the Alderman of each respective Company: And these were of Use, as they rivalled in free Gifts one with the other: When they did not deliver their Goods in Specie to the King, they were tallaged *ad decimam*, for the Lands they held, and for the Goods of which they were possessed.

In what Manner with respect to Companies and Corporations in Cities, &c. Maddox 492.

But there was this Difference, between the Tenants in Antient Demesne and Burgage Tenants; that these were bound to Suit of Court, by two Attornies or Representatives for each particular Bur-

Differences between Tenants in Antient Demesne, Burgage Tenants, and Companies within Towns,

in regard to
Suit of Court,
and the Man-
ner of being
taxed.

rough or Town; but the Companies within the Town were not represented, because they had only part of the Lands which were at first granted out to the City: But the Rustick Tenants were bound to no Suit but to that Court at home; for their Business was to attend their Husbandry, in order to make the most of the King's Demesnes. But the Burgage Tenures were under the same Tallage; because they did not deliver their Goods in Specie, no more than the Rustick Tenants in Antient Demesne: Afterwards these were turned into certain Rents; and then they were not taxed by Tallages; and if any higher Taxes were demanded of them, as 10ths, 15ths, and the like, they were given by their Representatives.

The Advan-
tages arising
from Suit of
Court by Te-
nants in Bur-
gage.

The Suit of Court of the Burgage Tenures when made free by Charter, were both useful to the Publick and profitable to the King; for their Towns depending on Trade and Arts, they were consulted with when any Laws or Rules were made in Relation to their Arts; and petitioned the King when any foreign Imposts were laid in foreign Kingdoms which tended to their Damage; it was profitable to the King, because they came with

with Gifts, that so they might not be tallaged; for tho' it was plain, that antiently, the King assessed these Tallages by his own Justices or Commissioners: (*Maddox* 506.) Yet afterwards, it was found less invidious, to receive Gifts and Aids by their Representatives, when they came to do Suit of Court; and they, vying one with the other, made it more profitable to the King than the Antient Tallages; and since they usually came with such Gifts, they frequently procured the Services of their Lands to be turned into Rents; from thenceforward the Tallages ceased; because the certain Rents came in Lieu of them; and then these Aids and Gifts were in the Power of the Burgage Holders to give or not. This encouraged the Tenants in Antient Demesnes to get their Services changed; and, towards the latter End of the first *Norman* Period, they, with the Men of the County, began to send their Representatives, which sat with the Representatives of the Burghers.

By what Means the Services of the Tenants in Burgage, and afterwards of the Tenants in Antient Demesne, were changed into Rents certain.

The Tenants in Knights-Service held by Suit to the King's Court; and were indeed the proper Suitors to his Court, for the Burgage Holders, being Corporations,

Tenants by Knights-Service bound to personal Suit at the King's Court when summoned.

How they were originally summoned, and the Regulations which afterwards took Place in that Respect, by confining the Summons to Earls and Barons alone.

What Number of Knights Fees constituted a Barony, and what an Earldom, with the yearly Value of them.
Co. Lit. 69.

rations, and Great Bodies of Men, could not come in Person; and therefore they were admitted to send their Proxies: But the Tenants by Knights-Service were on the King's Summons to attend his Court; and this they did in Person; and were not admitted to appear by Proxy without a special Order of Court, which was never granted, till they appeared and shewed Reasons for dispensing with their Attendance. It was originally in the King's Power to summon which of his Tenants he pleased; and such Attendance was deemed a Burthen; but afterwards they fell into more regular Summons of the same Persons: For those that had but small Tenancies were not able to bear the Expence of such Attendances, where in Living and Equipage they vyed with each other; and therefore only Earls and Barons were, in Process of Time, regularly summoned to such Attendances; and these were antiently Honours, compounded of so many Knights Fees, as would bear the Expence.

A *Barony* consisted of $13 \frac{1}{2}$ *Knights Fees*. A *Knight's Fee* was then of the Value of 20 *l. per Annum*; and the Value of a *Barony* was computed to amount to 400 *Marks*; and an *Earldom* to 400 *l.* which

which was 20 Knights Fees; so that the Unit was the Knight's Fee: the Earldom held in Proportion to the Knight's Fee, as the Pound to the Shilling; and to the Barony, as the Pound to the Mark; and the Barony held proportionably to the Knight's Fee, as the Mark to the Shilling.

The Baronies and Earldoms were antiently granted by so many Knights Fees, viz. if their Honour consisted of 13 Knights Fees they were compellable to hold *per Baroniam*; and he that had 20 Knights Fees to hold as an Earl: But when these Grants came to be lost by Time, they held their Honour as they did their Estate, by the prescriptive Right of Possession; and then their Summons to sit in Parliament was a sufficient *Indicium* of that Honour, even after their Estates were spent and gone; because they had antiently such Estate as corresponded to such Summons, and such Summons gave them a Seat on their several Benches in Parliament: and therefore their Honours continued, by sitting in that Aristocratic Body, though their Estates were spent on which the Summons first issued.

The Reason why a Summons to Parliament was deemed a sufficient *Indicium* of a Right to sit there.

Vid. post. cap. 3. versus finem.

But

Mr. Selden's
Opinion on
the last men-
tioned Points.

Seld. Tit.
Hon. 691.

But Mr. *Selden* is of Opinion, that there was no certain Number of Knights Fees necessary to make a Baron or Earl; but that they consisted of so many Knights Fees as were contained in the Charter, and with so many Knights he was obliged to attend; and that the Number of Knights, contained in the Charter, regulated the Number of Knights Fees contained in such Barony: and nothing is more certain, than that, when the Baronies were first created or given out at the Conquest, at which Time the whole Nation took a new Charter from the Conqueror, the Charter exprest the Number of Knights reserved on each Barony: and that such Barons were wont to grant out Lands to their Vassals, to hold by Knights Fees, to attend, and do that Duty, which was reserved by that Charter. From hence came all the Fruit of the Feudal Tenure; for, during Minorities, the King was forced to find another Person to serve instead of the Baron, and therefore had the Fruits of the Barony, in order to breed the Baron to his Service. The Baron, for the same Reason, had the Wardship of the Tenants Sons, in order to breed them up to the Wars; and since the Knights Fees were

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given

given to do the Duties of the Tenure, they were not certain ; but depended on the Bounty and Agreement of the first Baron with his Tenant. But in those early Times they very well knew what was necessary for the Support of a Knight, a Baron, or an Earl ; and in *Edward* the Third's Time, when the *Modus Tenendi Parliamentum* is supposed to have been written, they thought the usual Sub-
 stance of a Knight could not be less than 20*l.* *per Annum*, that of a Baron 400 Marks, and that of an Earl 400 Pounds.

C A P. III.

Of the Revenues arising from the Crown Lands; and the several Tenures by which these Lands were held: And occasionally, of the Institution of the two Houses of Parliament; the Foundation of the Privilege of Trial per pares; and the Manner of summoning Lords to Parliament.

The Policy of breaking escheated Baronies into lesser Tenures in Capite.
Spelm. Gloss. 67.
Seld. Tit. Hon. 692.
Co. Lit. 9.

TOWARDS the latter End of the first *Norman* Period, when any Barony escheated, they were wont to break such Baronies into several lesser Tenures *in Capite*; because they found the Barons by their great Possessions were able to give the Crown great Disturbance, and it was impossible that these, growing so numerous as to be at one Time three Thousand, should be all summoned at a Time; and therefore the King selected from that Number as many as he thought proper. This created great Variety in the Summons to Parliament, and first gave Ground to that Opinion
of

of the Lawyers, since much disputed, that 'twas the Summons to Parliament that created the Baron; and it has generally been agreed to be right, that *the Summons and Sitting in Parliament makes the Baron*; because, when the Charters of *William* the First were lost and destroyed by Time, the Feudal Baronies had no Evidence of their Baronage, but their doing Suit and Service as Barons at the King's Court: As, where the Charter of Feoffment of the Tenant is lost, the Tenant has no better Evidence of his holding of the Manor, than that he and his Ancestors have done Suit at the Lord's Court Time immemorial, and proving this by the Roll of the Manor.

But when the King had broke the greater Baronies into lesser, the *Great Barons* composed a House by themselves, and did not sit with the *Barones Minores*; and then the *Barones Majores* made an Aristocratic Body by themselves: And the *Barones Minores*, together with those that held of the King to pay Suit to the County Court, sent Representatives to Parliament that sat with the Representatives of the Burroughs, who now, having got their Tenures under certain Rents, concurred in all extraordinary Aids

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The Court of Exchequer.

Aids to the King. And the Tenants in the County being such as held immediately from the King, either to do Suit at the King's Court, or at the Sheriff's Court in the County, their Representatives were to be *Knights*; whereas the Representatives of the Cities and Burroughs were to be *Burgesses* and *Citizens* of each particular Town.

The Revenue arising from Tenures per Baroniam or in Capite.

The *Barons* or Tenants *in Capite* were such as were to accompany the King in his Wars, and they were to come attended with so many Knights Fees, according to their Patent, and those were mustered by the King's Marshal at the Standard. The Names of the Persons appearing, as likewise of the Defaulters, were inrolled: At the next Parliament they affect *Escuage*, which was in the Nature of an Affeerment of a Sum of Money by the *Pares Curie* upon every Defaulter: Generally speaking, the Ecclesiastical Barons did not go to the Wars, and therefore we find, in *Maddox's* Account of *Escuage*, there were more Rolls of *Escuage* taxt upon Bishops and Abbots than any other Persons. If a Baron was taxt to *Escuage*, and was distrained for the same unduly, when he had appeared in the Service; he was to take

take out a Certificate from the Marshal of the Host under his Seal, which was to be sent to the Justices, as *Littleton* says, fol. 74.

These *Certificates of Escuage* were generally before the Division of the Courts; and therefore, when *Littleton* says the Certificate was sent to the *Justices*, it seems to be a Mistake in the Printer, and that the Certificate was sent to the *Justiciar and Barons* under the Seal of the Marshal of the King's Host: and so a *Distringas* went out of the *Exchequer* from the Justiciar and Barons to distrain all the Defaulters; and if any Body was distrained, where he had served, he might appear at the Return of the *Distringas*, and plead that he was *in Servitio Regis*, and that was to be tried by such indented Certificate remaining before the Justiciar and Barons, and by nothing else. Likewise, if any Abbot that held in Mortmain was distrained, he might traverse, that he did not hold by Knights-Service, but free of all Escuage and Tallage. There are likewise in *Maddox*, several Instances of *Distringas's* that issued in Behalf of the Tenants *per Baroniam* to distrain their Under Tenants; because the Under Tenants were obliged to aid them

The Proceedings on Certificates of Escuage, and Distringas.

Maddox 468.

The Nature of the Distringas in Aid, and the Method of proceeding thereon, *Maddox* 470, 471.

them in order to the paying the King's Escuage: and this was in the Nature of a *Distringas* in Aid; since they were indebted to the Baron for Escuage, as the Baron was indebted to the Crown.

The different
Methods ob-
served in as-
sessing Es-
cuage.
Maddox 445.

The King's Tenants *in Capite*, being his own particular Freemen, did Suit at the King's Court in the most honourable Manner: they used likewise to assize or bring in their own Assessments, just as the Freemen in a Court Baron do assize the Assessments of those who are absent: and this was a good Contribution, because it put it in the Power of those who had discharged their Duty to assize the rest, for the Escuage was after assize by the Barons coming to the King's Standard, before he went on the Expedition; and if it were not then assize, but remained afterwards to be assize in Parliament, which was the more common Case; yet the Numbers of those doing their Duty, for Fear they should not have Escuage from their Tenants, were so much greater than the Absenters, that they generally made such Assessments as contented the Crown: And indeed it was thought but Justice so to do; because the only Consideration of their Tenures was the doing Service, and there-
fore

fore the Profit of their Lands, from the Time of the last Escuage paid, was answerable to the ensuing Escuage, for the Nonperformance of the Duty required of them: So that, the Tenants who had done the Duty usually put the Load heavily on those who had been negligent in the Expedition.

The Tenants in *Ancient Demesne* found Provision for the King, and the Tenants by *Burgage* Tenure found Cloth and other Merchandize for him; and these Provisions being valued at a certain Rate, were afterwards, in some Cases turned into Rents, and in some received in Specie: But upon particular Occasions of Wars, the Justices Itinerant were wont to go within those Liberties, and after a solemn Declaration of the King's Necessities, they used to ask a *Free Gift* in that Place as an Aid towards the King's Wars: And such Tenants and Burgeses were used to vote in the first Place, that the King should be supplied;—in the next Place the *Quantum* of the Supply;—and then they appointed their own Assessors, which were generally two, who rated every Person towards that *Quantum*: And then the King's Collectors entered

The Revenue arising from Tenures in Ancient Demesne and in Burgage.

The Manner of assessing and raising Free Gifts.

tered into such Liberty and collected it, according to the Rate thus imposed.

On Refusal of
Free Gifts,
quo War-
ranto's issued.

If such Burrough would either not supply the King, or not supply him in Proportion to his Wants, the King could not tax them by his own Power; because they were *free* and not *Villains*: For none but Villains could be taxed *haut en bas*, or at the meer Pleasure of their Superiors: But where they would not grant a Supply, it was usual for the Justices in Eyre to inquire into their Proceedings, and if there was any Abuse of their Liberties, *Quo Warranto's* were sent down, in order to seize the Franchises.

The Reason
of the Inequality
in the
Number of
Representa-
tives in Par-
liament in the
several Coun-
ties.

Erection of
Friburghs.

From this we may see the Reason of the Inequality of Representation in the several Counties; for there were only two Representatives in a County, and the rest were according to the Number of Friburghs that were in that County; and therefore when any Manor of Ancient Demesne was so changed, that the Provisions they were wont to answer to the Crown in Specie were turned into a Rent, they erected it into a *Friburgh*; and there were Words in the Charter to give them a Liberty discharged from all Payments: These were not taxed but by a *Free Gift*, which was managed as is
herein

herein before mentioned. But those Ancient Demefne Lands that sent their Provision in Specie, and had not changed them into Rents, were not tallaged; because after the Provisions rendered to the Crown, there was but a small Livelihood remaining to themselves for their Labour and Pains, and therefore they would afford no Tallage.

Hence it is, that in the Time of *Edward* the First, some Manors of Ancient Demefne sent Members to Parliament and not others; because such were then *Friburghs* subject to Tallage.

Right of
Electing to
Parliament 7,
106, 122,
142, 151, 1
181.

In *Cornwall* they sent forty-two Members to Parliament, because there were twenty *Friburghs* in that County; and that came to pass, because that was an Earldom, and afterwards a Dukedom, apart, and generally possessed by some of the Royal Family; and it being a Place abounding in Tin, they erected as many free Ports as they could, for the exporting of that Manufacture, and some of them were, under exprefs Conditions mentioned in their Charters, that they should not be taxed but when the rest of the King's Subjects were.

The Number
of the Cor-
nish *Friburghs*.
Do. 157,
186.

The Policy of
Edward the
First, in form-
ing the Model
of the lower
House of Par-
liament.

When the *Barones Majores* were broke into many *Barones Minores*, these likewise had the Right of assessing the Escuage, and therefore they were called with the rest of the Greater Barons to the Assessment of the Escuage; but not being able to come in Person, they sent their Representatives (as has been already mentioned) to sit with the Burgageholders; and from thenceforward, by the Policy of *Edward* the First, they were blended in one House; and therefore, as the Burgageholders and Citizens joined in the Assessments of the Escuage, so the Knights joined in the Assessments of the Aids of the Burgageholders and Citizens: By these Means they vied with each other who should give most to the Crown in their several Ways; and thus, *Edward* I., by calling the Knights, Citizens and Burghers to such Assessments, contented them, and served his own Purpose; because nothing was done but by their own Consent in the Assessment of Escuage or Aids: And from the Time of his Grandson *Edward* III. the Military Tenures declined, Mercenaries were used, and they made use of another Manner of taxing, which shall be hereafter mentioned.

But

But this is to be noted, that when the Burghers had ascertained their Rents, and were sent for, as by the King, to give him further Aids, they had Instructions from their Principals how much they should give; hence the Tax *began* with them, and not from the *Barones Majores*, because they could not agree with their Proposals if they exceeded the Commission they had from their Principals.

The Reasons why Taxes begin with the Commons.

Edward the First, when he modelled this excellent Constitution, and had brought Lords and Commons under a Regulation which seemed to be for the general Good of the whole, seemed to be industrious for the Destruction of the Records of what was passed; so that we cannot, with great Certainty, have an Account of our Government before his Time.

The ancient Records destroyed by Edward the First.

It had been the constant Usage before the Conquest, that all Judicature proceeded from the King: This Rule was regularly observed from the Conqueror's Time, for he seems to have been jealous of this Part of his Prerogative more than of any other; as is plain by confining the County Court to 40s. and if they held Plea of a larger Sum, a *Justices*,

How the supreme Judicature became vested in the House of Lords.

which is in the Nature of a Special Commission, was necessary; and therefore the Judicial Authority, as is elsewhere mentioned, was exercised, from the Time of the Conquest, by the King's Justiciar and Barons, summoned for that Purpose *in Curia Regis*, or appointed to that Purpose by the King's Authority: And therefore, when *Edward* the First modelled the Parliament into a regular Assembly of two Houses, as we have already mentioned, the Judicature was wholly vested in that House where the King always sat, (*viz.*) in the Upper House, or *House of Peers*.

It seems by *Coke's* second Inst. 50. they tried a Nobleman by his Peers very anciently in the Case of the King; as appears by the Earl of *Hereford's* Case in the Time of *William* the Conqueror.

The Origin of
the Privilege
of Trial per
Pares.

This turns on the Principle of the Feudal Law, "*Si inter Dominum & Vassallum lis oriatur, pares Curiae sunt Judices*": And therefore the Peers, in the Time of Parliament, were tried by the Peers in the House of Lords; and out of Parliament by the Justiciar, and in his Absence by the Steward of *England*, who summoned some of his Peers on the Trial, and twelve at least were obliged

to appear: This Summons is set forth
 3 *Inst.* 28. where my Lord Coke
 says, "There must 12 or more appear".
Vide Feudal Law, Vigellius 87. *Guidottus*
 197. *Lasius* 195, 196, where all agree
 the Rule to be, *That if the Contention*
was between the Lord and his immediate
Vassal the Pares were Judges; tho' this
 was subject to many Distinctions after-
 wards in the Empire; for the *Regal Feud*
 was judged before the Emperor's Judges,
 and the Rule was confined to Feuds *not*
Regal: And so, if the Trial was be-
 tween the Lord and his Vassal, if the
 Lands were Feudal or Allodial, it was
 before the ordinary Judges, and not the
 Pares. But in *England* the Pares were
 Judges of the Fact in every Case, (as is
 elsewhere mentioned): And the *imme-*
diate Pares Curiae were Judges, when
 the Contention was a Case of *Felony* or
Treason between the King and his *Vas-*
sal, which is according to an old Rule of
 the Feudal Law: But in other Cases, it
 was *Coram Paribus*, not of the Feudal
 Court, but in the County where the Fact
 was done; which was on the Presump-
 tion that they would have the best Know-
 ledge of the Fact and Credit of the Wit-
 nesses: And therefore, in all other Cases,

The Reason
 why Treason
 and Felony
 are triable by
 the immediate
 Pares Curiae;
 but all other
 Cases by Pares
 of the County
 where the Fact
 is done.

By what
Means Bishops
lost the Privi-
lege of Trial
by their Peers.

unless of Treason or Felony, the ordinary Trials were by Juries: *Vide* Doctor *Stillingfleet* of the Bishops Jurisdiction in capital Causes, 360 to 373. And tho' they anciently summoned but some of the Peers, yet when the Parliamentary Peerage had been settled by *Edward* the First, and so downwards, they summoned them all; and the Manner of giving their Opinion is set down 1 *H.* 4. 1. 3 *Inst.* 28, 29, 30. But the Bishops generally claimed an Ecclesiastical Privilege, to be only tried by the Archbishop as their Ordinary: Therefore in the Case of *Mark*, Bishop of *Carlisle*, where this Challenge was made of the Liberties of the Church, and overruled, he did not challenge his Peerage: And so was the Case of *Fisher*, Bishop of *Rocheſter*, in *Henry VIII.* Dr. *Still.* 368. for they would not make any Challenge to be tried by their Peers, for that would have admitted a Temporal Jurisdiction; so by *Non Uſer* of any Right of being tried by their Peers in capital Cases, these Bishops, who held *per Baroniam*, and had consequently a Privilege to have such a Trial, totally lost the same, and are tried by a Common Jury. (*v. post chap. 4.*)

All

All Peers are summoned by Writ to Parliament; the Form of which see in *Cotton's Records* 2, 3, 4.

Anciently, as was said, *the Tenure first created the Honour*, and such as held *per Baroniam* were summoned to do Suit and Service in Parliament, and such Summons was an Evidence of such Tenure; afterwards, when these Tenures were broken, the Summons gave the Barons Authority to sit, *provided they sat accordingly*; (1 *Inst.* 9. b. 16. b.) because their Sitting in Parliament makes them Part of the aristocratic Body: So that if they are legally summoned and sit, they have a Right ever afterwards. This is much controverted by *Pryn* in his Plea for the House of Lords from 147 to 161.

Qu. Whether a Summons to Parliament is sufficient Evidence of Tenure per Baroniam.

Vide antea pa. 25.—Cave.

But in all Degrees of Quality above a Baron a Summons is not sufficient, because there are other Ceremonies requisite; as in that of a *Viscount* there must be a solemn Imposition of a Coronet: This Ceremony must be performed, unless dispenced with by Letters Patent, and these being Matters of Record, must be produced to shew his Title. So the *Earl* is created by girding on a Sword, and the solemn Imposition of a Coronet, in *England*; and in foreign Places by delivering

The Manner of summoning Peers to Parliament. Seld. Tit. Hon. 530. Do. 495, 496. Show. Rep. Spelm. Gl. 142.

livering him an Ensign. And the *Judges*, tho' they are summoned to Parliament, come only to assist the Parliament; and therefore the *Chancellor*, who is in Nature of a Steward in the Court Baron of the King, lays the Mace on the Table when it is an House, to shew that the King's Steward, who is appointed in his Absence to hold the Court, is there. And the Judges are called, "*Quod Interfitis*" "*Nobiscum & cum Cæteris de Conciliis nostris*"; and therefore they sit round the Table, in order to assist the Speaker, or the King when present, in Matters of Law. 4 *Inst.* 4.

The Chancellor in the House of Lords in nature of the Steward in a Court Baron. 4 *Inst.* 266.

But the Chancellor has no Voice unless he is a Peer, for he anciently was none of the Peers unless he held *per Baroniam*; nor is he now, unless created by Patent or Summons: For in Court Barons or County Courts the Steward was not Judge, but the *Pares*, nor was the Speaker in the House of Lords Judge, but the Barons only.

Difference between the first summons of a Peer, and an ordinary Summons.

The first Summons of a Peer to Parliament differs from an ordinary Summons; because in the first Summons he is called up by his proper Christian and Surname, not having the Name and Title of Dignity in him till he has sat as
Part

Part of the aristocratic Body: But after he has sat, the Name of Dignity is Part of the *Cognomen*: But this Writ of Creation, in all other Things, is the same with the ordinary Writ that calls them.

But *Quære*;—If the Person on his first Summons is called by the Name of Lord, and sits under that Name as Part of the aristocratic Body; whether by that he would not be ennobled: As if the Father, being Lord *A*, was outlawed for High Treason, and his Son is called by the Name of Lord *A*. which he was not at the Time of issuing the Writ, and sits in the House by virtue of such Writ: Whether, sitting as Part of the aristocratic Body, he be not ennobled.

Quære, whether a Commoner, summoned by the Name of Lord, shall thereby be ennobled.

C A P. IV.

Of the Revenues arising from the Church-lands and Spiritual Tenures: With an Historical Account of Synods and Convocations, and the Manner of holding them in England and Ireland.

Wake's State
of the Church
127 to 159.

Ecclesiastical
Tenures.

The Tenures
in Frankal-
moigne, turn-
ed into Baro-
nies by the
Conqueror,
and thereby
subjected to
Escuage, and
Attendance in
Parliament.

IN the *Saxon* Times the Lords Spiritual held by Frankalmoigne, but yet made great Part of the Grand Council of the Nation; being the most learned Persons that, in those Times of Ignorance, met to make Laws and Regulations.

But *William* the Conqueror turned the Frankalmoigne Tenures of the Bishops and some of the great Abbots into Baronies; and from thence forwards they were obliged to send Persons to the Wars, or were assessed to the Escuage, and were obliged to attend in Parliament; and then their Attendance was complained of as a Burthen: And this begat the grand Quarrel in *Henry* the Second's Time between the

the King and *Thomas Becket*. For the Statutes of *Clarendon* required such Attendance, which confirmed the Escuage on them; for this they made many subtle Exceptions, as that the Court took cognizance of *Treasons and Felonies*, whereas the Clergy, by the Canon of *Toledo*, were forbid to give Judgment in Blood: "*His qui in sacris ordinibus constituti sunt, in judiciis sanguinis adjuvare non licet*:" And therefore, to obviate this Objection, the *Constitutions of Clarendon* permitted them to withdraw in Cases of Blood.

The Bishop's Plea for an Exemption from these Services.

Obviated by the Constitutions of Clarendon.

Still. of Bps. 269.

The Objection of the Bishops to the 11th Article of this Statute.

Notwithstanding this Concession, they still objected against the 11th Article of this Statute, which says, that, "*Archiepiscopi, & universæ personæ Regni qui de Rege tenent in Capite, habent possessiones suas de Domino Rege sicut Barones, & sicut Barones cæteri, debent interesse judiciis Curie Regis cum Baronibus, quousque perveniatur in iudicio ad Diminutionem Membrorum, vel ad Mortem.*" Pryn of the House of Lords 221.

This Article obliged them to do Suit in the King's Court; and therefore tho' they had excepted the Case of Blood, yet they knew the doing Suit in the King's Court confirmed their Estates as Baronies; and they did not care that the

The Reason of making this Objection.

Pryn 221 to 242.

Munificence

Munificence and Frankalmoigne of the ancient Kings should be changed into such Tenures: But notwithstanding the Quarrel with *Becket*, the King prevailed that they should continue Baronies, and as Barons they sit in the House.

The inferior Clergy who held by Frankalmoigne anciently not subject to Tallages or Efcuage.

The means by which Edw. 1. endeavoured to subject the inferior Clergy to those Charges.

But the inferior Clergy which held by Frankalmoigne, were not comprehended within any of the Taxes and Tallages which were affest on the King's ancient Demefne and Burgage Tenants; nor in the Efcuage which was affest on the King's Tenants *per Baroniam*, and the other Tenants by Knights Service. But 18 *Edw. 1.* the King, being under great Difficulties thro' his Wars in *Scotland*, and the Kingdom being exhausted by the Barons Civil Wars, projected the present Constitution; *viz.* That the Earls and Barons should be called as formerly, and embodied in one House: And that the Tenants in Burgage should send their Representatives; and that the Tenants by Knights Service, and other Socage Tenants in the Counties should also send their Representatives to Parliament; and these were embodied in the other House. He designed to have the Clergy as a third Estate; and as the Bishops were to sit *per Baroniam* in the Temporal Parliament,

liament, so they were to sit with the inferior Clergy in Convocation: And the Project and Design of the King was, that as the two Temporal Estates charged the Temporalties, and made Laws to bind all Temporal Things within this Realm; so this other Body should have given Taxes to charge the Spiritual Possessions, and have made Canons to bind the Ecclesiastical Body: To this End was the *Præmunientes* Clause in the Summons to the Archbishops and Bishops; which is as follows; *viz. Præmunientes Priorem & Capitulum Ecclesiæ vestræ, Archidecanum, totumque Clerum vestræ Diocesis, facientes, quod iidem prior & Archidecanus in propriis Personis suis, & dictum Capitulum per unum, idemque Clerus per duos procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero habentes, una Vobiscum intersint, modis Omnibus tunc ibidem ad tractandum, ordinandum, et faciendum, nobiscum, & cum cæteris prælatis & proceribus, & aliis incolis Regni nostri, qualiter sit hujusmodi periculis & Excogitatis Maliciis obvian- dum. Teste Rege apud Wengeham 30mo die Septembris Anno.*

Form of the
Præmunientes
Clause.
Wake's Au-
thority of
Christian
Princes 364.

This altered the *English Convocation* from the *Foreign Synods*; for these were

totally

Difference be-
tween the En-
glish Convo-
cations and
Foreign Sy-
nods.

totally composed of the Bishops, who were Pastors of the Church; (for the Clergy were regularly esteemed only their Assistants;) and therefore the Bishops only were collected to compose such foreign Synods, to declare what was the Doctrine, or should be the Discipline of the Church.

The ancient
Manner
of holding
Provincial,
and Diocesan
Synods.

In the ancient Church they had but one Pastor to every particular Church or Diocese, and the other Clergy were ambulatory at the Bishop's Pleasure within the Diocese; and tho' after the Council of *Lateran* the Parochial Clergy were settled in each Parish, the Bishop only retaining a Chapter in the Cathedral Church as Assistants to him; yet the Bishop was reckoned to be sole Pastor of the Church, and they to have the Cure under him. Hence in Provincial Synods the Bishops only met, and were convened by the Metropolitan; and each Bishop likewise held a Diocesan Synod with his own Clergy, in which he made Rules and Orders for the Regulation of the Diocese, provided they were not against the Canons of the Province.

The Project
of Edward the
First to subject
the Clergy to
Taxes.

Edward the First projected to have made the Clergy one Third Estate dependant on himself; and therefore, not only

only called the Bishops, whom as Barons he had a Right to summon, but the rest of the Clergy, that he might have their Consent to the Taxes and Assessments made on that Body.

But the Clergy, foreseeing they were likely to be taxed, pretended they could not meet under a temporal Authority to make any Laws or Canons to govern the Church; because their Canons were made under the Inspiration of Heaven, and not by any Authority derived from temporal Powers: And this Dispute was maintained by the Archbishops, who were very loath the Clergy should be taxed, or should have any Interest in making Ecclesiastical Canons, which formerly were made by their sole Authority; for tho' those Canons had been made at *Rome*, yet, if they were not made in a General Council, they did not think them binding here, unless they were received by some provincial Constitution of the Bishops: And tho' the inferior Clergy, by this new Scheme of *Edward the First*, were let into the Power of making Canons; yet they foresaw they were to be taxed, and therefore joined with the Bishops in opposing what they thought an Innovation. This they did

E under

The Clergy
outlawed for
not obeying
the *Præmu-*
nientes Clause.

Their Submis-
sion there-
upon, and the
Consequences
of it.

under Pretence that their Power was to-
tally derived from Heaven, and therefore
they paid no Obedience to the *Præmu-*
nientes Clause; but the Archbishops and
Bishops threatned to excommunicate the
King. He and the Temporal Estate took
it so ill that they would not bear any
Part of the Public Charge, that they
were beforehand with them, and they
were all outlawed, and their Possessions
seized into the Hands of the King. This
so humbled the Clergy that they at last
consented to meet; and to take away all
Pretence, there was a Summons, besides
the *Præmunientes* Clause, to the Arch-
bishop, that he should summon the Bi-
shops, Deans, Archdeacons, Colleges,
and whole Clergy, of his Province: From
hence therefore the Bishops, Deans, Arch-
deacons, Colleges, and Clergy, met by
Virtue of the Archbishops Summons;
which being an Ecclesiastical Authority
they could not object to: And so the
Suffragan Bishops came to Convocation
by Virtue of the Archbishop's Summons,
the Clergy esteeming it to be in his Power
whether he would obey the King's Writ
or not: But when he had issued his Sum-
mons they could not pretend it was not
their Duty to come. But the *Præmu-*
nientes

nientes Writ was not refused, because it directed the Manner in which the Clergy were to attend; *viz.* The *Deans* and *Archdeacons* in Person, the *Chapter* by one, and the *Clergy* by two Proctors: But however they held, no Convocation could meet without the King's Writ to the Archbishop, because on that Writ his Summons went out; and it was on the foot of the Archbishop's Summons they sat as a Provincial Synod. And the King, by his Writ, prevailed on the Archbishop to convene the Synod; and he, by his own Authority and Legatine Power from the Pope, was confessed to have Authority to summon the whole Clergy.

In 1314 the Clergy of the Province of Canterbury protested against the Summons of the Archbishop to the Bishops, because it recited the King's Writ. Appendix to Wake's State, &c. 36, 37.

The *Præmunientes* Clause was inserted in the Writ to every Bishop as well as the Archbishops, which directed the Manner in which the Clergy should be chosen. But the Writ to the Archbishop was only in general, to summon his Suffragan Bishops, Deans, Archdeacons, Colleges, and all the Clergy of his Province; and on this Writ to the Archbishop he issued his Summons both to the Suffragan Bishops, the Deans, and Archdeacons in Person, the Chapter by one, and the Clergy by two Proctors; so that his Sum-

The Writ to the Archbishops.

Suarez de
Legibus, lib. 4.
c. 10.

mons follows the *Præmunientes* Writ exactly, which was directed to him and to the Bishops. They met and chose on such Summons; for they allowed, as the Archbishop might have a Temporal Authority as well as a Spiritual Power; so he might have a Temporal Motive to summon a Spiritual Synod: And yet, lest it might be thought, (of which they were very jealous), that their Power was derived from Temporal Authority, they sometimes met on the Archbishop's Summons without the King's Writ; and in such Convocation the King demanded Supplies, and by such Request owned the Episcopal Authority of convening. So that the King's Writ was reckoned by the Clergy no more than one Motive for their convening. But if the Archbishop in his Summons recited the King's Writ, they protested against it, because that was laying his Authority on the King's Writ, which the Clergy would by no Means endure; for they would not consent that the Prince had any Ecclesiastical Authority to convene Synods, but they allowed the King's Writ to be a Motive for the Archbishop to convene, if he agreed in Judgment with the King.

The

The Judgment in Parliament that put the Clergy from the King's Protection does not appear: But that they were so, appears from the Clause Roll 22 *Ed.* 1. where it appears, that the Prelates and whole Clergy of the Kingdom had granted one Half of their Benefices and Goods, of which a 10th had been before granted, to the Use of the Holy War; and upon this he took the Clergy into his Protection. From whence it appears the Taxation of the Clergy was first set on Foot under Pretence of the Holy War, and that the King taxed them afterwards to his own Occasions; according to that, the Writ is, *juxta Taxationem ultimo inde factam*, which no King durst have done Ryley 462, but one that had got great Reverence 463. among the People by his Exploits in the Holy War. Echard 316.

This succeeded so well, that when The Statute of the Pope encroached on the King by Proviso and collating to Ecclesiastical Benefices by his Præmunire made. own Papal Provisions, the Statute of Co. 3 Inst. *Provisos* and *Præmunire* on Appeals to 119. Rome was made; which passed the bet- 25 E. 3. p. 121. ter on the Clergy, because the Statute re- 27 E. 3. c. 1. cites that those Benefices were given to Gibson's Ap- pend. 3. Aliens.

Nature of the
Process of
Præmunire,
and the Form
of the judg-
ment thereon.

But the Process of Præmunire was made use of to put the Clergy out of Protection, and they used the Word *Præmunire* in their Summons to the King's Court, because in the *Præmunientes* that Word had been used; and Judgment on such *Præmunire* was given in this Form; viz. *Consideratum est quod præd' E. W. extra Protectionem Domini Regis ponatur, ac quod omnia Bona & Catalla, Terræ & Tenementa, ipsius E. W. sint Domino Regi forisfact', & præfat' E. W. Committitur Marr' durante beneplacito Domini Regis, &c. Co. Ent.*

435.

Institution of
the two Pro-
vincial Synods
in England,
assembled
under the
Summons of
the Archbi-
shops.

From henceforward, instead of making one State of the Kingdom, as the King designed, they composed two Ecclesiastical Synods under the Summons of each of the Archbishops; and being forced into those two Synods before mentioned, they sat, and made Canons by which each respective Province was bound, and gave Aids and Taxes to the King. But the Archbishop of *Canterbury's* Clergy, and that of *York*, assembled each in their own Province; and the King gratified the Archbishop's Vanity, by suffering this new Body of Convocation to be formed in the Nature of a Parliament,
The

The Archbishop assumed the State of a King; his Suffragans sat in the upper House as his Peers; the Deans, Archdeacons, and the Proctor for the Chapter, represented the Burghers; and the two Proctors for the Clergy the Knights of the Shire; and so this Body, instead of being one of the Estates as the King designed, became an Ecclesiastical Parliament, to make Laws, and to Tax the Possessions of the Church, and to cajole the Archbishop; the King not only received his own Aids, but Benevolences were given by the Convocation to the Archbishop.

At the Reformation, by the Act of Alteration Submission of the Clergy, 25 *Hen. 8.* made in *c. 19.* these Convocations were to be assembled only by the *King's Writ*; whereas before, they often met on a Summons from the Archbishop without his having received any Writ from the King, because they looked on him as having Authority from Heaven; and by this Statute, they could not make any Canons without the King's Licence, or put them in Execution without it. the above Manner of assembling the Convocations by 25 H. 8.

From hence they began to call the Convocation one of the three States, because they could not meet without the The Convocation called one of the three States.

King's Writ, or make or execute any Canon without the King's Licence, (as has been already observed); but however, not only the *Præmunientes* Clause but the Writ to the Clergy continued, because they still apprehended no Canons could be made by Temporal Authority.

The Clergy brought under the same Method of Taxation with the Laity.

Thus this continued till 13 *Car. 2. c. 4.* when the Clergy gave their last Subsidy; when it appeared more advantageous to continue the taxing of them by way of a Land Tax and Poll Tax, as it was in the Rump Times; the Clergy found this easier than the Tenths which they used to pay in their former way of taxing: From hence forward it passed that they should have a Vote for Members in Parliament, as they had in the Rump Times, and they were taxed as the Laity were.

3 E. 4. c. 1.

In *Ireland*, the Pale depending on the King, the Clergy seemed to have complied with the Model of *Edw. 1.* in send-

In Ireland the Prelates sat in the upper House of Parliament, and the Proctors for the inferior Clergy in the lower.

ing Proctors to Parliament; and the Archbishop and Bishops and mitred Abbots sat in the upper House, and the Proctors in the lower House. Hence, by 36 *H. 6. c. 1.* it appears that they made a Law, that beneficed Parsons should forfeit their Benefices if they were absent

absent without Leave ; which sort of Regulation was made in *England* by Ecclesiastical Authority before the Submission of the Clergy in the 25 *H.* 8.

It is to be known, that the *Præmunientes* Writ in *Ireland* summoned only the Proctors of the Clergy, and not the Deans, Archdeacons, and Proctors of the Chapters, as in *England* ; as appears by an antient Writ in *Richard* the Second's Time, wherein the Proctors only are summoned ; and it is the only Writ extant before *Henry* the Eighth, on which the Clergy were summoned. So that the Parliamentary Establishment in *Ireland*, in relation to the Clergy, differed from that which was established in *England*, for this Reason ; that *Edward* the First projected the Representatives of the Clergy in Proportion to the Number of the Temporal Body, and because there were many Corporations that held in Burgage Tenure in *England*, therefore the Deans, Archdeacons and Proctors of Chapters were let in, to make an equivalent Number ; but in *Ireland* there were at first only Representatives of Shires: For the Burghs did not arise from Burgage Tenures, as in *England*, but from Concessions from the King to send Members, which were erected

The Manner of issuing the *Præmunientes* Writ in *Ireland*.

The Constitution of the Burghs in *Ireland*.

erected in later Times, when, by the securing an Interest in such Towns proper Representatives to serve the Turn of the Court were sent to Parliament; but the antient Members being only for the Shire, the Proctors were chosen from the County, to answer them in Number.

The Proctors of the Irish Clergy excluded from their Seat in Parliament, 28 H. 8.

But by 28 H. 8. c. 12. the Proctors of the Clergy are excluded from any Seat in the lower House of Parliament; and from that Time they seem to be summoned by the *Præmunientes* Writ and the Writ to the Bishop, in the same Words as in *England*. As the Proctors came to Parliament from all the Parts of the Kingdom, so they assembled in Convocation at one Synod where the Parliament was held; and did not form four Synodical Meetings, in the four distinct Provinces, as they did in the two distinct Provinces in *England*; and therefore they make one National Synod, under the Primate, and there, by the King's Leave, they make Canons which bind the whole Clergy through all the four Provinces.

The Manner of electing a new Proctor in case of the death of a former in *England*.

If any Member of the Convocation who is a Proctor dies, the Archbishop issues his Mandate to the Bishop of that Diocese to elect another; and this by Virtue of the Power inherent in him to
summon

summon his Suffragan Bishops, who being to obey him, *in omnibus licitis & honestis*, and the Clergy their Bishop in the like Manner, they by that command make an Election to supply the Place of one of their Proctors.

In *Ireland*, when any Proctor dies, The Manner of issuing the Mandate from the Archbishop of the Province, to the Suffragan Bishops of the Diocese, and not from the Primate, unless in his own Province; because the Synodical Authority in each Province belongs to the Archbishop of that Province, though they meet in one Body to make a National Synod. the Mandate for this Purpose in Ireland.

During the Times of Popery, the Bishops contended that they were to be tried only by their Ordinaries, and therefore would not submit to be tried *per Pares*; and from hence it is, that there is no Instance where they were tried by their Peers, though they held *per Baroniam*; and therefore, after the Reformation, when the Temporal Power was restored, there being no Instance where they had been tried *per Pares* in Parliament, they were tried by Common Juries: Though there were Instances, in the Time of Popery, where a Bishop, being arraigned for High Treason, pleaded Why there is no Instance of a Bishop tried by his Peers. Stillington Bishops Jurisdiction 367, 368. he

he was to be tried by his Ordinary, and being over-ruled, was tried by a Common Jury; because he could not have two dilatory Pleas.

The Convocation sometimes advised with by the Parliament in Matters Spiritual.

Sometimes the Lords, and sometimes the Commons, were wont to send to the Convocation for some of their Body to give them Advice in Spiritual Matters: Such were the Temporal Laws in Relation to the Lollards and Heretics which were enacted for the Punishment of such Heretics as were cast out of the Church on Excommunications; but Matters purely Spiritual they generally transacted before the Reformation. Afterwards they began to receive the Assistance of the Convocation for the settling of the Church. But this only by way of Advice, for they have always insisted that their Laws, by their own Natural Force, bind the Clergy; as the Laws of all Christian Princes did in the first Ages of the Church.

C A P.

C A P. V.

Of the Revenues arising from the Counties; the Methods of collecting them; their several Kinds; and Titles: With the Constitution of the County-Courts.

BESIDES the Tenants of the King which held *per Baroniam*, and did Suit and Service at his own Court; and the Burghers and Tenants in Antient Demesne, that did Suit and Service, in their own Court in Person, and in the King's by Proxy; there was also a certain Set of Freeholders that did Suit and Service at the County Court. These were such as antiently held of the Lord of the County, and by the Escheats of Earldoms had fallen to the King: Or such as were granted out by Service to hold of the King, but with particular Reservation to do Suit and Service before the King's Bailiff; because it was necessary the Sheriff, or Bailiff of the King, should have Suitors at the County Court that the Business there might be dispatched. These
 Suitors

Of the Institution of the County Court or Sheriff's Torn.

Suitors are the *Pares* of the County Court, and indeed the Judges of it; as the *Pares* were the Judges in every Court Baron; and therefore, the King's Bailiff having a Court before him, there must be *Pares* or Judges, for the Sheriff himself is not a Judge: And though the Stile of the Court is *Curia prima Comitatus E. C. Milit' vicecom' Comitatus præd' Tent' apud B. &c.* by which it appears that the Court was the Sheriff's; yet by the old feudal Constitutions, the Lord was not Judge, but the *Pares* only; so that even in a *Justicies*, which was a Commission to the Sheriff to hold Plea of more than was allowed by the natural Jurisdiction of a County Court, the *Pares* only were Judges, and not the Sheriff; because it was to hold Plea in the same Manner as they used to do in that Court.

6 Rep. 11, 12.
4 Inst. 266.
Spelm. Rem.
50.
Twelve at
least of the
Pares Curia
necessary to
join in a
Verdict.

Introduction
of the Affize
by the Nor-
mans

According to the Laws of *Alfred*, there were to be twelve at least of the *Pares Curia* in the County Court to give a Verdict; for if there were not twelve at least consenting in one and the same Sentence, the Plaintiff failed; and he could have no Judgment of the *Pares Curia*: And this was the original of the *duodecemvirale Judicium* in England. But when the *Normans* brought in the Affize before

before the Justices in *Eyre*, there it was necessary for the *Pares* in the first Place to view the Land, before they came to the Justices to give their Verdict; and then, if they all agreed, the Judge immediately took the Verdict: But if they could not agree, then he asked them the Reason of their Verdict; and if seven agreed then there were five added *de Afforciamento*. And this was the Practice in *Normandy*; as appears by *Terraine* 391, 392. *Old Custumier*, c. 95. fol. 71. and in *England* as appears by *Fleta*, l. 4. c. 9. fol. 230. *Bracton*, l. 4. c. 19. fol. 185. and *Hale's Com. Law* 120, 261.

But it seems, that when these Jurors were added by way of Afforciamment, they likewise must have a View; because they could not be properly stiled Recognitors unless they spoke upon their own Knowledge; and therefore when the original Recognitors and those that came by way of Afforciamment consented in the same Verdict, Judgment was given; but if they did not consent, then there was an Afforciamment of more Jurors, till they had a Verdict of twelve; which was according to the ancient Policy of the *English Law*, by which Suits were carried

and Method of Trial thereon, by the Justices in *Eyre*.

Recognitores de Afforciammento, who.

Trial of the Affize by the Recognitores de Afforciammento.

on, till there were twelve consenting in one Verdict.

Why the Justices of Assize could not try the Inquest by way of Afforciamment.

But after the Justices in *Eyre* were disused, and the Assizes were tried by the Justices of Assize, then it was impossible to carry on the Inquest by way of Afforciamment, because the Justices of Assize only sat *pro hac vice*; and therefore it became necessary that 12 at least of the 24 should be impanelled to give the Verdict, and therefore the whole 12 were obliged to consent in the same Verdict.

The Office of the Coroner described.

Out of the *Pares Comitatus* one was chosen to be the Coroner, who recorded the Pleas of the Crown in the Torn, all Inquisitions of Felons of themselves, and People coming to an untimely End, and likewise all Outlawries; and these Coroners were in Nature of Comptrolors to the Sheriff, keeping a Record of the Fines and Amerciaments in the Sheriff's Court: And therefore the Amerciaments, in the Courts above, were assessed

The ancient Manner of assessing Amerciaments.

Greisly's Case
3 Rep. 39.

according to *Magna Charta*, c. 14; *Quod nullus liber homo Amercietur nisi per Sacramentum legalium hominum*, and the Court gave Judgment *Quod sit in misericordia*; this was delivered to the Clerk of Assize, and by him to

to the Coroner, who affeered such Amerciament by the *Pares* of the Court. And so, anciently, according to the same Statute, the *Comites* and *Barones* were affeered by their Peers in Parliament; and to that End I conceive Estreats of such *Mi'as* were sent to the Clerk of the Parliament: But by an Order of the House of Lords those Amerciaments were reduced to a Certainty; that of a *Duke* was 10*l.* an *Earl* 5*l.* a *Baron* and *Bishop* five Marks: So that by that Order Amerciaments becoming certain, there was no Occasion of sending them up to the House of Lords as they did formerly. So the Coroners afterwards in all Civil Actions kept one certain Rule of Amerciament, which in Time grew to so inconsiderable a Sum that they were not worth the affeering; but the Fine in Trespass, which was imposed by the Court, was so done without Affeerment, and was set, as it anciently had been affeered, at 6*s.* 8*d.* and is still paid and allowed to the Officer of the Court, who takes it now as his own Fee: But the *Mi'as* are not affeered as formerly, nor allowed in any Bill; because they cannot be levied without an Affeerment, by the Statute of *Magna Charta*, which

Amerciaments reduced to a Certainty. 2 Inst. 28.

Why not now affeered.

is not now worth the while; but the Judgment is still *in Misericordia*, as formerly, that the Court may order an Affeerment if they think proper, because the legal Consequence is an Amercement.

The Sheriffs
Vicountiels
and Proffers,
what.

These *Pares* of the County Court made up the *Corpus Comitatus*, and the Rents they paid the Crown made the Sheriff's *Vicountiels*, for these the Sheriff gathered as Part of his own Farm; they being properly Rents that were answered to him as Sheriff, and paid in when they did their Suit at his Court; and for these the Sheriff pays in his *Proffers*.

The several
Names by
which the Vi-
countiels are
called in diffe-
rent Counties.
Hale's Sheriffs
Accounts
38, 39.

Hence it is that these Rents are called *Auxilium Vicecomitis* in Cambridge, Cumberland, Essex, Hunt', Leicester, Northampton, Wilts, Warwick, and Sussex; — *Auxilium ad Turnum Vicecomitis* in Devonshire; — *Vic' Franc' Pleg'* in Bedford, Bucks, Canterbury, Huntington, Essex, Hertford, Northampton, Somerset, Southampton, Stafford; — *Redditus ad Turnum Hundredi* in Dorsetshire; — *Turnum Vicecomitis* in Essex and Hertford; — *Hundred Silver* in Norfolk; — *Faith Silver* in Stafford, because they did Fealty at the Time of Payment; — *Panel Silver* in Norfolk: *Certum Letæ cum Capitagio*, which was
2 a certain

a certain Rent paid to the Sheriff, for the King, upon the Leet's being taken out of the Torn, and to which the Tenants were contributory; and, the Leet being taken from the Torn, such Reservations were made payable to the King as Part of the County Rents, and paid as such to the Sheriff at his Torn; so *Leet Fee* in *Suffolk*; *Mot Fee* or *Court Fee* in *Salop*; — And, being paid at the Time when they did their Suit at the County Court, they called it *Suit Silver* in *Stafford*; — and *Secta Burgi & Villar'* in *Cambridge*: and because these were ancient Farms, that paid annual Profits to the Sheriff, before they were reduced to Rents, and made up his Farm to the King, therefore were they called *Certitudines* in *Berks*, *Hereford*, and *Rutland*; — *Certi Redditus* in *Lincoln*, *Leicester*, *Somersetshire*, *Southampton*, *Warwick*, and *Wilts*; — and *Certi Redditus ad Communem Finem*, in *Derby*, and *Nottingham*: And because several of these Rents were assessed according to each Quantity of their Hides of Lands composing them, (each Hide containing 100 Actes, *Spelm. Verbo Hide*; *Maddox Dialogus de Scaccario* 31.) they were called *Hideage* in *Berks*, *Bedford*, *Bucks*, and *Oxford*; — *Soken Fees*

in *Suffolk*: Some of them being reserved in *Blanc Money*, viz. Money without Allay, and made 105*l.* to the Hundred; they were called *Blanc Farms* in *Yorkshire* and *Suffolk*; — *Blanc Rents* in *Kent*; — *Albus Servus* in *Dorsetshire*, *Servus* signifying anciently a Farm, (*Spel. Verbo Servus*): Some of these Rents were called only Farms as *Firma Antiqua* in *Huntingdon*; — *Firmæ* and *Feodi Firmæ* in *Cumberland*, *Northumberland*, *Nottingham*, and *Stafford*: Several held likewise by *Castleward* of the King, and to do Suit and Service at the Sheriff's Court; and the Tallage of such *Castleward* belonging to the King was turned into Rents; such were *Seēta* and *Warda* in *Bedfordshire*, and *Bucks*; — *Ward Silver* in *Essex*: And some of these Tallages, when turn'd into Rents, were reduced to a Certainty by an Inquest, and therefore called *Redditus Affizæ*: Some Rents were likewise annually paid to the Sheriff, such as *Fines pro Seēta Curiz Relaxand'* in *Bedfordshire* and *Essex*; — *Fines Aldermannor'* in *Sussex*; — *Præstatio pro Pulchré Placitand'* in *Bedfordshire*, and *Bucks*: These were *Præstationes arentatæ*, and particularly excepted in the Statute of *Marlbridge*, for the Liberty of doing their Suit in the Sheriff's

Sheriff's Court, and not coming up to the King's Court: This seems to be a Payment when their first Suit of Service was annexed to the County Court.

The Sheriff took these Farms from the King, which was generally called *De Corpore Comitatus*; and if he took them *De Corpore Comitatus* he might account as Bailiff; but if he took them at a certain Rent, they were called *De Firma Comitatus*. The Rents of these Farms were some of them answered in Blanc Money, or Money without Alloy, and others by Tale; (100*l.* Blanc being accounted equal to 105*l.* by Tale;) and where the Sheriff held the Farm *De Corpore Comitatus*, he was charged with one gross Sum, in this Manner, viz. "*De Corpore Comitatus 115*l.* Blanc & Numero 10*l.**": But where he held *De Firma Comitatus*, the Tenants that paid their Rents in Blanc were reckoned up by themselves; and so likewise, the Tenants that paid their Rents by Tale were separately reckoned up; and the Charge on the Sheriff in that Case was "*De Firma Comitatus 100*l.* Blanc, & De Numero 10*l.**"

The Difference between *Farmis De Corpore Comitatus* and *De Firma Comitatus*.
Hale 50, 57.

The Cremen-
tum Comita-
tûs and Firma
de Cremento,
what, and
whence
arising.
Hale 36.

Castle Guard
and small
Rents.

Arentations of
Assarts.

Next to this come the Rents called *Crementum Comitatus*, which was either *Crementum Comitatus* when received by the Sheriff as Bailiff, or *Firma de Cremento Comitatus* when he farmed them of the King. These were several Farms, that had been in particular Farms to the Sheriff, and were thrown afterwards into the *Corpus Comitatus*: That is, if the King had several Lands that were held by *Cornage* or *Castle Guard*, by small Rents, and to do Suit and Service at his own Court, such Suit and Service was afterwards transferred to be done in the County Court, and because the Rents were small, they would not put the Tenants to the Trouble of coming to the King's *Exchequer*, and therefore these Rents were paid in the County Court.

The Profit of the County was likewise encreased by *Arentations of Assarts*, viz.

When any one cut down the Groves and Trees in the Forest, and turned the Ground into plowed Land, for this he paid a Rent to the King, and was ordered to do Service at the County Court; which was another Article that encreased the *Crementum* of the County: and likewise

wise if any Lands seized into the Hands of the Crown were not granted to any Body, but left in Charge with the Sheriff; this also, in older Times, increased the *Crementum Comitatus*. Land seized by the Crown and left in the Sheriff's Hands.

When in the Account to the Sheriff, they had wrote the Body of the County, and the Increase of the County, then they brought in the *Discount*, which consisted of the *Liberationes* and *Eleemosynæ constitutæ*. The Articles which composed the Sheriff's Discount.

The *Liberationes* were the Payments of any of these Rents to such Persons to whom the King had granted them; and the *Eleemosynæ constitutæ* were Charities granted out of such Lands. Liberationes and Eleemosynæ constitutæ.

The next were *Br'ia Regis*, being Sums granted *pro hac vice* out of those Farms. Br'ia Regis.

These were Discounts paid out of the Body of the County. As these Lands were sometimes charged in *Perpetuity* by the King, so they were likewise sometimes granted away: This the Sheriffs complained of, because it was expected from them that they should pay the old Rents to the King, tho' part of the Lands from whence those Rents arose were aliened; but afterwards, they were to

account *de Remanente Firmæ Comitatus* Hale 69, 70, 71.

post Terras datas; so, where there was a *Crementum Corporis Comitatus*, which

Stat of Rut-
land.

10 Ed. 1.

The Manner
of entring the
Accounts de
Remanente
Crementi
Corporis Co-
mitatûs, de
Remanente
Firmæ Comi-
tatûs, and the
foreign Ac-
count, on the
Roll.

Right of Elec-
tions 235.

was but in some Counties, and part of them had been likewise aliened by the King, they accounted *De Remanente Crementi Corporis Comitatus*. And here it is to be observed, that in the Pipe, they kept in a Roll apart, a particular Account of all the Seizures with which the Sheriff was charged; the Total of which came in as an *Item* in the Sheriff's general Account, which was called *Remanentes Firmæ Comitatus post Summam suam*, (that is to say) such Farms as were seized to the King, and which were charged upon the Sheriff, *as remaining in his Hands*; and this Sum was an *Item* placed after his *Viscontiels*, and they kept a Roll on Purpose of this extraordinary Charge. I have before me a Series of the *Norfolk foreign Account*, from 1 *H. 7.* to 1 *Eliz.* the Title of the Account begins with the Time in which the first Seizures were made, and mentions the Year of the present Accomptant, and who was the preceding, and who the subsequent Sheriff, so that they are made up when the Sheriff is cast out of Court; and the *Items* mentioned the Time and the Cause of Seizure, and at the End of each of them is written, *De Remanente*, which is as much as to say, that the Sheriff has still those

those Lands in his Hands, and that they are not granted out. Some of these Seizures are for Felony, others for Alienations of Lands holden *in Capite* without Licence, and others are Lands seized by the Escheator and coming into the Hands of the Sheriff; and at the Conclusion of the said Account, in every one of them it is, *Summa Oneris* (mentioning the Sum) *script' remanen' in Magno Rot'lo de Anno* , in *Itin' Norfolk, post Summam suam.*

In the ancient Sheriff's Account he was charged *de proficuo Comitatus*, if he received it as Bailiff, or *de firma proficui Comitatus*, if he farmed it at a certain Rent. These consisted in the profits of the Sheriff's Torns; County Court; Fines, and Amerciements; Fines for Nuisances, Bloodshed, Assize of Bread and Beer; which anciently arose to a considerable Sum: The Profits of Hundred Courts, Wapentakes, &c. which in *Henry* the Third's Time were very considerable, but afterwards as Business came into the King's Court, these *proficua Comitatus* became very inconsiderable.

Next to these in the ancient Accounts were the *Firmæ Majores & Minores*, which the King had turned from Provisions in Kind into certain Rents, payable at his

The Charges on the Sheriff *de proficuo Comitatus* & *de firma proficui Comitatus*.
Hale 44.

The Charge of the *Firmæ Major' & Minores* on the summons of the Pipe, and how accounted for.

Ex-

The Nature
of the Sum-
mons of the
Pipe.

Exchequer, and with Suit and Service to be done at his own Court: These were wrote in Charge on the *Summons of the Pipe*, which is a Summons in Words the same with that of the *Greenwax**, only different Matters are charged in it. This Summons was in order to quicken the Tenants to pay in their Rents into the Exchequer, and take Tallies from thence; and if they were paid into the Exchequer by the Tenants, the Sheriff o'nied them on his account; for if they shewed him their Tallies of Payment below, the foils of which were likewise entered by the Chamberlains in their Books, and by the Clerk of the Pells in his, that was a sufficient Discharge for that Sum to the Sheriff, and the Tenant also: But if the Tenant did not pay into the Exchequer but to the Sheriff, and the Sheriff totted it in his Account, the Tenant was discharged, and the Sheriff charged with it; because Payment to the King's Bailiff,

Vernon 7.

Hale 49.

* N. B. That the Summons of the Pipe is the same with that of the Greenwax, appears by Gervais of Tilbury. Mad. Dialog. 36. The form of this Writ is in the black Book of the Exchequer, lib. 2. cap. *Qualit. fierent Summonitiones*, and which as Hale says continues to this Day.

who

who had Charge to receive it, was Payment to himself: But it was the Tenant's Business to see it was totted by the Sheriff, and to produce (if Occasion) the Sheriff's Receipt to the Court, to oblige him to tott it; if, thro' the Tenant's Neglect, it was nichill'd, he was anciently obliged to pay it again, and had his Remedy over against the Sheriff, by Commissions which the King anciently issued, as well as by action; so that it was better for the Tenant to pay it into the Exchequer, according to his original Tenure, unless he could confide in the Sheriff.

13 E. 2.
de attinētis.

The Farms of the County, and all other Farms were wrote in the *Great Roll*, which is in nature of the King's Rent Roll of his whole Estate: In such Roll, the particular Rents which made up the Body of the County were set forth; but because they afterwards became very small, by Change of Money and Releases to Tenants, therefore they omitted afterwards to charge them in particular, but put them in Gross in the *Corpus Comitatus*; and therefore in the Great Roll in the Exchequer, which is without Date, the Farms that compose the *Corpus Comitatus* were wrote at large; and this continued till 12 Ed. I. when the Clerks pro-

The Contents
of the Great
Roll of the Ex-
chequer, and
the Changes it
has under-
gone.

Madox 655.

procured a patent, that they should not be obliged to write out every Year each particular of the *Corpus Comitatus*, but to write them on a separate Roll once for all, which was to be read to the Sheriff every Year on his Account.

Liberationes
ad Comitum,
what.

The most common of the *Liberationes* or Liveries were the *Liberationes* to the Comes or Earl of the County, which seem to have risen on the Escheat of such Earldoms to the King; so that many of these Shreevalties seem to be composed of the Rent paid to the ancient Earls, with Suit to their Courts in the County; and it seems afterwards to have been the Policy of the Crown, never to give out such Earldoms again as Feudal and Palatinate Jurisdictions: But the *Norman* Policy was to deliver such Counties to their Bailiff, and for the Maintenance of the Splendor of the Earls, to give them one Third.

The Abuses of
Sheriffs in ni-
chelling Debts
received by
Tallies or Ac-
quittances, re-
medied.

The Sheriffs often gave Acquittances and Tallies to the Tenants, and yet nichelled them on the Account; and upon Complaint of the Tenants, the King frequently issued out Writs, whereby Inquisitions were taken of what Persons the Sheriff had received Monies which were nichelled at the Exchequer, and such Tallies were produced to the Persons impanelled,

panelled, and if the Sheriffs were found guilty they were attached: The Words of the Writ are, *Quod Veritatem Talliarum deductarum scilt' Inquirat', & si deductores Talliar' fuerint attincti, tunc habeas Corpora eorum coram baronibus, &c.* But for the more effectual Remedy of this Grievance the Statute *De Attinctis* was made, 13 *Ed. II.* which is; that when Sheriffs, and other Ministers, being impleaded in the Exchequer (for receiving the King's Debts by Tallies or Acquittances, and not acquitting the party thereof in that Court), are so far gone in Plea that the great Distress is returned against them, and if they come not then in to answer, then shall issue out another Distress, returnable at a certain Day, by which Writ Proclamation shall be made in full County, that the Defendant appear at the Day, and acquit the Debt for which he made such Tally or Acquittance; at which Day, if he comes not, and the Writ be returned, and the Proclamation certified, he shall be holden as Convict, and the Debt shall be taken of him as a Debt recovered in the King's Court, and Damages shall also be awarded to the Plaintiff, at the Discretion of the Barons. Howbeit none shall be hindered by this Statute

Madox 670.

Wingate's
Stat. Tit.

Sher. 547.

Vern. 2. 3.

Statute to complain of Sheriffs and other Ministers, when they shall be found in the Exchequer, to make them answer there, as hath been formerly used.

Of the annual Roll, and appofal of the Sheriff, and the Office of the Clerk and Comptroller of the Pipe.

From the Roll of the preceding Year, and the *Nova Oblata* of Estreats, the Clerk of the Pipe anciently made the annual Roll, and the Comptroller of the Pipe (having a Duplicate of the said Roll) made out the Summons of the Pipe; on which Summons the Sheriff was *apposed*, anciently in open Court, and now by the Curfitor Baron; and he is said to be *apposed*, because the Court is Judge what he ought *apponere*, and before the Court, the Clerk of the Pipe takes down what is nichilled by the Sheriff, and so does the Comptroller of the Pipe, and the Sum the Sheriff charges himself with; and the Comptroller of the Pipe makes out a second Summons, which is in nature of a *Levari* against the Body, Goods, and Lands of the Debtor: But of this more hereafter.

The second Summons of the Pipe.

Changes made in the Entries on the annual Roll.

About the Time of *Edw. I.* there were several Tenants and Debtors that broke in the King's Debt, and indebted also to others of the King's Predecessors; and with these the annual Roll was stuf: which made it necessary to the second Remem-

Remembrancer to write them out in Charge in the Prerogative Writ, which created an unnecessary Trouble and Expence: Henceforward the desperate Debts were to be taken out of the annual Roll, and it was not necessary for the Clerk to write them out to the Sheriff, but to put them into the *Exannual Roll*, which was not necessary to be transcribed; and as Debts became desperate they were all transmitted to the *Exannual Roll*, which was one Roll of desperate Debts, and never transcribed as the annual Roll was: This exannual Roll was read over to the Sheriff on his Appofal, and chiefly at *Easter* when the Process issued out; and if he thought any of the desperate Debts to be sperate, they were transmitted to the annual Roll of that Year, and so writ out in Process to him, and continued in Charge till they were got in, or again transmitted to the *Exannual Roll*.

Contents of
the exannual
Roll.

Next to the *Firmæ Majores & Minores* was the *Casual Revenue*, consisting of the Debts of the King; and the first in Order on the Roll were the *Debita atterminata*; these were the Debts to which the King by his Writ had assigned Terms or Times of Payment, and were the same with those assigned for his other Farmers, which

The Charge
of the Casual
Revenue.

Debita atterminata
whence they
arose, and the
Terms assign-
ed for paying
them.

which were at the *Utas* of *Easter* and *Michaelmas*; and these being paid in the Manner of Rents, were next in Order to the Farms. These Payments of attermi-
 nated Debts were on large Fines set, and Amerciaments affeered, which were rather *secund' qualitatem delicti quam quantitat' contenmenti*: The Statute of Magna Charta having provided, *quod nullus homo amercietur pro parvo delicto nisi secund' modum illius delicti, & pro magno delicto secund' magnitudinem delicti, salvo sibi contenemento suo*: And the Reason of the Statute was, that they would not have the Feud forfeited for lesser Trespases, as it was in Treason and Felony; and it would have amounted to a Forfeiture of the Feud, if Amerciaments and Fines were so large, that they could not be paid out of the Person's Estate without Proceſs for the Sale of the same; and therefore, when they estreated Fines and Amerciaments, which anciently were very large, Writs issued to the Court of Exchequer to attermi-
 nate such Debts, and to issue an Inquisition, to inquire *Quant' inde Regi dare valeat per Ann. salva sustentatione sua, & uxoris, & liberorum suorum*; and accordingly such Debts were reduced into annual Payments, according
 to

to the annual Value of the Freehold, that the King's Debtor was seised of. This was called *Estallament*, which is ^{Estallament, what.} assigning, or establishing, the Times of Payment of such Debtors. Hence common Persons were used to give Times of Payment to their Debtors, and hence arose the *Solvend'* in common Bonds, ^{Maddox 678, 679.} and the Notion of *Debit' in præsentis* *Solvend' in futuro*; by this Means drawn over to us from the Civil Law.

When the Debts were thus attermi- ^{If attermi- nated Debts were not paid at the Time,} nated, if they were not paid at the Time, the whole was levied; because that when the Debts were atterminated according to the Contenement of the Party, if he did not pay it according to the Attermination, he plainly endeavoured to avoid the Justice of the Law; and therefore the whole was immediately to be levied, as upon an Insolvent Tenant.

The next to the Atterminated Deb's ^{Charge of the Great Debts, Known Debts, and Respited Debts.} were the *Great Debts* and *Known Debts*, and amongst these were the *Respited Debts*, which being generally the oldest came the next on the Roll. These were ^{Maddox 655, 681.} anciently respited by the King's Writ, which gave Authority to the Court to delay their Payment, and so sometimes respited by the proper Authority of the

Court. For as the Court might *attermi-*
nate by the Statute of *Magna Charta*, so
 also they might *respite*, which is no
 more than giving Time for such Pay-
 ments: And this they often did, when
 they were doubtful whether such Debts
 ought to be paid or not; as where Pay-
 ments had been made to the Sheriff be-
 low which the Sheriff had not totted, or
 in shewing other good Cause, they re-
 spited such Debts till the King's Pleasure
 was known.

Charge of the
 Nova Oblata.
 Maddox 655.

Next to these were the *Nova Oblata*,
 being the Debts estreated since the ma-
 king up the last Year's Roll. These Debts
 bound the Lands and Tenements of the
 Debtor from the Time they were of Re-
 cord, *viz.* the *Fines* and *Amerciaments*,
 from the Time they were imposed in a
 Court of *Record*; so that any Person go-
 ing to the *Rotulus Magnus*, might know
 how far each Person was indebted to the
 King, unless in *Estreats* for one Year
 past; for which they were to search the
 Records of the other Courts: and the
 Recognizances taken for the King in his
 other Courts were wont to be estreated
 into the *Exchequer*, in order, when for-
 feited, that Process might issue on them.

No *Recognizances* were taken to the King by the ancient Conservators of the Peace, nor by Sheriffs or Constables: But in Cases where the Defendant wasailable, the Sheriff or Constable took an Obligation in his own Name, but not any Recognizance to the King: But the *Sheriff* bailed to appear at his own Torn, and the *Constable* to appear at the View of the Franc-Pledge.

How bail was
antiently ta-
ken by the
Sheriffs, and
by the Con-
stables.
Dallison 11.

By 18 E. 3. Stat. 2. c. 2. and 34 E. 3. c. 1. *Justices of the Peace* were established, to be appointed by the Commission of the King; and these were found so useful, that in a short Time the Name and Office of the *Conservators of the Peace* vanished: and these, by 3 H. 7. c. 3. bailed by Recognizance taken to the King, to appear at the Quarter Sessions: and since 1 E. 4. c. 44. all Indictments and Presentments at Leets and Torns are to be certified to the Quarter Sessions: by which Means those Obligations taken by the *Constables* are now out of Use; and the *Justices* bail by Recognizance to the King.

Establishment
of Justices of
the Peace,
who now bail
by Recogni-
zance.

These Recognizances being only personal Securities, it became a Doubt when they began to bind the Lands of the Subject; and formerly they held that such Recognizances did not bind the Lands of

At what Time
Recogni-
zances to the
King become
a Lien on
Lands.

the Subject till they were returned of Record. But by the 33 *H. 8. c. 39.* it is ordered, that such Debts should bind as Statutes Staple; for since these and Statute Merchants were allowed, by former Statutes, to bind Lands and Tenements from the Time of making them, tho' contracted in private and not on Record, they thought it reasonable the King should have the same Privilege as private Persons had; since the King's Recognizances, tho' taken before Justices, are to be returned of Record the next Quarter Sessions, and after they are become forfeited, they are estreated by the Sessions into the Exchequer.

Of the Time of entring Recognizances on the great Roll, and issuing Procefs on them.

And since Recognizances were taken, both in the Court of the King's Bench, and in the Common Pleas and Chancery, which do not appear on the *Rotulus Magnus* till they are forfeited, and estreated into the Exchequer; yet that being of Course done in a short Time, there did little Prejudice accrue to the Subject by not seeing the whole Charge of the King's Debt on the *Rotulus Magnus*. And when such Recognizance or Bond is returned into the Court of Exchequer, if there be a Warrant of Attorney to confess Judgment, Judgment is immediately confessed

fessed to the King; and on such Judgment the Process issues as on other ordinary Judgments of the King: But if there be no Warrant, then a *Scire Facias* issues, and the King has Judgment on a *Scire Feci*, or 2 Nichills returned.

All Courts of Record, where the Fines are not granted away by Letters Patents, transmit their *Estreats* to the Lord Treasurer's Remembrancers Office; and these, with those Fines and Amerciaments that are imposed in the Exchequer in the King's Remembrancer's Office and Clerk of the Pleas Office, were delivered to the Clerk of the Pipe, formerly, who put them amongst the *Nova Oblata* on the Great Roll.

Estreats of Fines and Amerciaments how formerly transmitted and entered on the great Roll.

But towards the Reign of *Ed. III.* the casual Revenue being so much encreased that the Clerk of the Pipe could not engross and transcribe them all on his annual Roll, and many of them being small and paid on the first Demand, it was necessary to make them Part of an annual Charge, in the same Manner as the other annual Revenue of the King was. Therefore a new Officer was invented, *viz.* the *Clerk of the Estreats*, and instead of delivering of such *Estreats* of the Exchequer and other Courts to the Clerk

Institution of the Clerk of the Estreats.

Summons of
the Green-
wax, what.

of the Pipe, they were thenceforward delivered to him; and he issues a distinct Process from the Summons of the Pipe, *viz.* The Summons of the *Greenwax*; which, tho' it be almost in the same Words with the Summons of the Pipe, yet it is different in the Charge, for the casual Revenue is only charged in the Summons of the *Greenwax*.

Institution of
the foreign
Apposer.

There was likewise a new Officer before whom the Sheriff was to account on this Process, who is called the *foreign Apposer*; perhaps he was called *foreign*, either because he was Apposer in Court, or rather because this was a foreign and distinct Account from that of the Great Roll, which was carried on by itself; The foreign Apposer sends the Debts nichelled by the Sheriff to the Clerk of the Pipe, which then being presumed to be Debts that will stand out some Time, are by him entered upon the Great Roll; and he sends out the second Process of the Pipe; because, having been already on Process on the Summons of the *Greenwax*, it has answered *Magna Charta*, c. 8. by which, no Sheriff or Bailiff shall seize Lands for the King's Debts, so long as the present Goods and Chattles of the Defendant shall suffice,
and

Nichelled
Debts how ac-
counted for
and recovered.

and the Debtor be ready to satisfy the same; and that the Pledges of the Debtor shall not be distrained as long as the principal Debtor shall be sufficient.

In *Ireland*, instead of the Clerks of the Pipe and Estreats, they have an Officer who makes out the first Process, whom they call a *Summonitor*, and he receives the Answer of the Sheriff in Court, and the Clerk of the Pipe likewise; and then the Nichills are to be entered on the Great Roll, and the Comptroller of the Pipe, who has a Duplicate of that Roll, issues out the second Process of the Pipe, and then they proceed as in *England*.

In Ireland the Summonitor performs the Duty of the Clerks of the Pipe and Estreats.

G 4 C A P.

C A P. VI.

Of the Revenues arising from Debts due to the King on Recognizance or Bond ; and the Methods pursued for recovering them.

From what
Time the
King's Debts
shall bind
Lands or
Goods.
Corvin. de
Feud. 164.

ALL Debts to the King bind from the Time the same are contracted ; for the Debts that were of Record always bound the Lands and Tenements, and the Debts not of Record by 33 H. 8. 39. bind as a Statute Staple : for all Lands being held mediately or immediately from the King, when therefore any Debt was recorded of any Person, it laid the Estate as liable to such Debt as if it had been a Reservation on the first Patent : and therefore, as the King could seize for the non-payment of the reserved Rents, so he could seize the Land for any Debt with which the Land was charged ; but the Lord, giving out any Tenure for Knight's Service or other Service, could not seize for the non-performance of such Service, as they did amongst foreign Feudists ; because the King had an Interest in such Services : For since the
Baron

Baron was to come attended with so many Knights, the King had an Interest in the Vassal who attended that Lord who was to attend him; and therefore Lords were not permitted to seize the Feud of their Tenants, but to distrain them for the Service reserved: In the same Manner, if a Debt was recovered by the Lord in the Court Baron, he could only order the Bailiff to levy that Debt by Distress; for he had the same Remedy for the Debt recovered in his Court, as he had for the Rent: and therefore the King, who had the eminent Dominion, could seize for the non-performance of the Tenure, as the Lords of the Feud could by the Feudal Law; so, whenever he had charged a Debt on his Tenant, he had the same Remedy as on an original Reservation: and therefore the King, having a Right to seize for the Reservation, had likewise a Right to seize for the Debt; but the Lords, having no more than a Right to levy on the Goods, and not a Right to seize the Land itself, the Debt to the Lord did not bind the Land, as the Debt to the King did, which subjected the Land to a Seizure from the Time it was on Record. But Goods were bound at Common Law from

The Court of Exchequer.

from the Teste of the Writ, whether it was a *Levari* or a *Fieri Facias*; because otherwise, the Debtors, by Alienation of the Chattles, might disappoint the Execution; and the Lords having by their Process a Right to distrain Goods, there arose a Lien on those Goods from the Time the *Levari* was taken out: And the King's Prerogative could not be less than the Right of the Subject, and therefore bound the Goods from the Teste of the Writ. But this was found inconvenient, and therefore by 29 *Car. 2.* no Execution shall bind the Property of Goods but from the Time of the *Delivery* of the Writ to the Sheriffs. But this Act seems not to extend to the King; for an Extent of a later Teste supercedes an Execution of the Goods by a former Writ; because by the King's Prerogative at Common Law, if there had been an Execution at the Subject's Suit, and afterwards an Extent, the Execution was superceded till the Extent was executed; because the public ought to be preferred to the private Property: And the rather, because the King is supposed, by public Business, not to be able to take Care of every private Affair relating to his Revenue, and therefore no Time occurs to the

5 Mod. 377.
v. the Case
where two
Writs were de-
livered on the
same Day, and
the last was
executed first,
and good. Per
Cur.

the King; and if he was to be prevented from his Execution by another Person coming in before him, Laches must be imputed to him, which the Law does not allow: and since the King's Debt is preferred in the Execution, therefore an Executor is obliged by the Law to pay the King's Debt on Record before a Debt on Record to a Subject.

If the King's Debt be prior on Record it binds the Land of the Debtor into whose Hands soever it comes: because it is in the Nature of an original Feudal Charge on the Land itself, and therefore must subject every Body that claims under it. But if the Land were aliened, in Whole or in Part, as by granting a Jointure, before the Debt contracted, such Alienee claims prior to the Charge, and therefore is not subjected to it.

The King's Debt, if prior on Record, binds the Land of the Debtor into whose Hands soever it comes afterwards.
Moor 126.

But if the Subject's Debt be by Statute Staple or Judgment, and prior to the King's Debt, and the King extend the Lands first; the Subject shall not, by any after Extent, take them out of his Hands. But if such Judgment be extended, and the Subject has the Possession delivered to him by a Liberate, he shall hold it discharged from the King's Debt; but if the King's Extent come before the Possession

In what Cases the King's extent shall, or shall not be good against a prior Debt on Record of the Subject.
Curson's Case, 3 Leon. 2, 3, 9, 240.
4 Leon, 10.
2 Rolls 156, 157, 158.

Possession by Liberate, the King's Extent shall be preferred, and the Subject wait till the King's Debt be satisfied. The Reason of the Difference is, because the King's Debt is in Nature of a Feudal Charge, which if it comes on the Lands before the Property of them is altered, it seizes them as it might have done for the original Service at first imposed; but if there had been a lawful Alienation before such Debt, there it is not the Feud of the Tenant, and therefore such Charge cannot affect it: therefore if there was a precedent Judgment or Statute Staple, and a Liberate pursuant, before the King's Extent comes down, there it cannot charge the Lands; because the Property is altered by the Extent of the Subject, which relates to the Time that the Judgment was first given, or Statute Staple acknowledged; because such Extent and Liberate of the Subject was only executing such Judgment or Statute on the Land, and the Execution was relative to that Judgment, which was prior to the King's Charge; and so there was a complete Alteration of Property prior to the King's Charge before his Extent came down: but if the King's Extent had come

come before the Liberate, he had charged the Land whilst it was in the Hand of his Debtor, and then his Charge would be satisfied as if it had been in the first Feudal Donation; for nothing can hinder the King's Charge, (which comes on the Land as if it had been settled in the first Feudal Donation) but what amounts to a precedent Alienation; for so far as there is a precedent Alienation they are not the Lands of his Debtor, and the Feudal Charge is only laid on the Lands of his Debtor; and if such Lands were not his Debtor's Lands, they are not subject to that Charge; and a Liberate, in pursuance to a preceding Judgment, amounts to an Alienation of the Land itself, before it became charged to the King.

Note also, the Lien upon Lands by the Subject's Debt came in by the Statute *West. 2.* for before that, the Judgment did not bind the Land; but the King's Debt bound the Land before that Statute: But that Statute does not touch the King's Prerogative, and therefore the King has a Power to levy upon the Lands, notwithstanding the preceding Lien by Judgment; and therefore the King may seize Lands that are bound by a preceding Judgment whilst the Lands are in the Custody of the Law on the Elegit
or

The Lien on Lands of the Subject came in by Statute *West. 2.*

or Extent, and before they are actually delivered out to the Creditor by the Liberate, as a Satisfaction for his Debt; but when they were actually delivered out to the Creditor by the Liberate, they then no longer belonged to the Debtor, since the King's Writ had delivered them over for Satisfaction of a Debt that was preceding to the King's: for the Creditor did not take them under the Burthen of the King's Debt, because his Lien was antecedent to the King's Debt; and it were repugnant to construe him to take the Land *sub onere* of the King's Debt, when he took it in Satisfaction of a Debt precedent.

Curson's Case,

3 Leon. 239,
240.

4 Leon. 10.

In what case
the King shall
extend but a
Moiety, and in
what Case the
whole of the
Land.

If Judgment be confessed by *A.* to *B.* and *A.* afterwards enfeoffs *C.* of his Lands, and then *B.* assigns his Judgment to the King; in this Case, the King shall extend but a *Moiety* of the Lands in the Hands of *C.* But, if *B.* had assigned the Judgment to the King, *before A.* had enfeoffed *C.* the whole Lands had been liable; for the King has the Prerogative to extend *all* the Lands of the Debtor for his Debt: But the Feoffment being made to *C.* before the Assignment of the Judgment to the King, the Lands of which *C.* was enfeoffed were never the Lands of the

the King's Debtor; for they were the Lands of *C.* before *A.* became indebted to the King; and therefore the Prerogative of the King which makes it a Feudal Charge, never affected those Lands, but they are subject to the same Lien to which they were when it was only the Debt of *B.*

The Great Roll consisted of the Particulars herein before-mentioned, and was made up by the Clerks of the Office upon the Sheriffs bringing in their Accounts; the new Sheriffs were constituted in *Michaelmas* Term; and in *Hilary* issued the first Summons of the Pipe, and of the Greenwax; those contained the *Corpus Comitatus*, and the Farms that were in Arrear the former Year, and the Greenwax contained the Casualty that had been estreated before the End of *Hilary* Term; and on these Writs the Sheriff answered to each Article given him in Charge, on the Return of these Writs at the *Utis* of *Easter*; and the answer of each Sheriff was writ down on a Roll, and these Rolls packed together made the Roll of the Year: so that the Roll run in Words of the Present Tense, because the Sheriff did then render the Account, which was marked *R. C.* or *C. R.* upon each

When the great Roll was made up, and at what Times the Summons of the Pipe and of the Greenwax issued, what they severally contained, and how the Sheriff answered them.

How the great Roll was made up.

When the
Nova Oblata
came into the
great Roll.

each Particular charged in the Writs; so that on the first Writ he accounted for the *Oblata* of the preceding Year: But the *Nova Oblata* did not come on the Great Roll till the *Utas* of *Michaelmas*; because the Sheriff did not answer in Court touching those *Oblata* till the second Process: But the Foreign Apposer cast up what was totted, and sent it to the Pipe, and a Schedule was made of what was nichell'd, and is called *Schedula Pipæ*: And this was transcribed by the second Remembrancer in his Book, which is also called *Schedula Pipæ*; and from hence the second Summons of the Pipe was made out, and on the Return of that second Summons the Sheriff was to answer to the *Nova Oblata* of his own Year.

What the
Schedula Pipæ
is.

Of Bonds taken by the
Customers and
Collectors.

Towards the Time of *H. 7.* and *H. 8.* as the Revenue encreased, and Merchants were obliged to make Payments, the Customers and Collectors received Bonds from the Parties to the King. These Collectors were no more than Bailiffs or Receivers, and not as Justices between the King and the Party; and therefore the Acknowledgments before them were not in a Court of Record: And there was, before 33 *H. 8.* 39. this Difference,
between

between them and Bonds of Record; that these were immediately levied by the *Levari*, but those Debts not of Record could not be levied by the *Levari*, but a *Scire Facias* was to issue thereupon: and the Reason of the Difference is; that where an Obligation is acknowledged in a Court of Record, such Recognizance is the same as a Judgment, the Conusor is personally present, and the Court is supposed to know him as much as a Defendant against whom they give Judgment: And hence it is, that the *Levari* issues, and all the other prerogative Processes, and that Debt cannot be discharged till there be a Receipt upon Record; but where the King's ministerial Officer takes an Obligation to the King, such Obligation is not of Record, and when the Officer delivers such Obligation into Court the Time of the Delivery is recorded; so that if that obligation be just, and the Conusor has nothing to say against it, no Body can controvert the Time of its Lien, because the *Delivery* is of Record, and therefore it ought to bind from that Time; but the *Obligation* is no more than a *Warrant of Attorney* for the Ministerial or other Person to deliver it of Record; for being an Act in

The Difference between such Bonds and Bonds of Record.

The manner of giving upon Bonds to the King in Ireland.

H

Pais

Pais, and not of Record, the Conusor may come in upon the Return of the *Scire Facias*, and traverse the Obligation: but in this it differs from a Warrant of Attorney; for if a Man forge a Bond and Warrant of Attorney, and then confesses Judgment, the Defendant can never deny the Deed, if a *Scire Facias* issued after a Year and a Day; but in this Case there is no Judgment upon the Bond, for the Bond is only delivered of Record, and therefore the Judgment upon the Bond arises only on the *Scire Facias*; and therefore in *Ireland*, they often take a Warrant of Attorney to confess Judgment upon such Bond in an Action of Debt, and when such Judgment is entered, it is a Matter of Record, and cannot be discharged but by an Act of equal Notoriety. And the Practice here in *England*, before 33 H. 8. cap. 39. was the same with the *Irish* Practice (where that Statute is not in Force).

The Manner
of suing upon
Bonds in *Pais*
to the King in
Ireland.

When the Solicitor for the Crown has Directions to sue upon a Bond only, he lodges the Bond in the chief Remembrancer's Office, and immediately a *Scire Facias* issues thereon, either to the proper County, or two *Scire Facias* to the City

City of Dublin, which are called first & *al Scire Facias*. All this is done of Course.

If the Sheriff returns *Scire feci* thereon, then, upon filing it, the Court gives the Party twelve Days to plead, by entering three Rules, *viz.* Four Days to plead, four Days *ex Gratia*, and four Days *ex uber' Gratia*; the last of which only is moved in Court, and is for Judgment *absq; Motione*, if no Plea in four running Days; and if the Party does not plead within the Time, *Levari Facias* issues for the full Penalty of the Bond.

If the Party pleads, then the like Trial and Proceedings as in other Cases.

If the Sheriff returns two *Nills*, then upon Motion, the Court gives but four Days peremptorily for the Party to appear and plead, which if he neglect to do *Levari* issues as above.

The Judgments in both these Cases are made up as Judgments by Default at Law, and the Form of the *Scire Facias* is:

Georgius Die Gratia Magnæ Britannicæ, Franciæ & Hiberniæ Rex, Fidei Defensor' &c. Vicecom' Civit' Dublin Salutem: Cum Joh'es Walker, & Chamberlin' Walker, al's, John Walker of Furteen

Form of the
Scire Facias.

in the County of Kilkenny, Esq; and
 Chamberlin Walker of the City of
 Dublin, Esq; per script' eor' Obligator'
 geren' dat' die 8vo. die Martii Anno
 D'ni 1714, sigil' su' sigillat', & fact'
 apud civit' Dublin, in paroch' Sti. Mich'is
 Archangeli in Warda Sti. Mich'is, in
 comit' ejusd' civit', & in Offic' Capit'
 Rem' nostri scaccarii n'ri Hiberniæ jam
 reman' de Record', tenentur nobis in sum'
 ducent' septuagint' & sex libr' Sterl',
 solvend' ad cert' diem jam præterit', &
 eas nobis nondum solver', nec alter eor'
 solvit nec solvi fec', ut dicitur; nosq; de
 dict' Ducent' Septuagint' & sex libr'
 Sterl' nobis jam debit', omni celeritat'
 qua poter', satisfier' volent', ut est just':
 vobis igitur nunc præcipimus quod non
 omit' propter aliq' libertat' in Bal' v'ra,
 quin eam ingred', & per probos & Legal'
 hom' de Bal' v'ra Scire facias præfat'
 Job'em Walker & Chamberlin' Walker,
 quod sint coram Baronibus de scaccario
 nostro, apud le King's Court, Dublin —
 prox' futur' ad ostend' & propon' si quid
 pro sese h'eant vel dicere sciant, quare
 nos Execut' versus ipsos pro præd' Ducent'
 Septuagint' & sex libr' Sterl' h'ere non
 debemus, & h'eas ibi tunc no'ia eor' per
 quos eis Scir' fec', & hoc Bre'. Teste
 Jefferay

Jefferay Gilbert Ar', Capit' Baron'
fcc'ii n'ri præd' apud le King's Courts
præd' die Anno R'ni n'ri 4to.
Temple R. R's.

If Bond with Warrant of Attorney be entered into, the Warrant is brought to the Officer, who enters a Consent, in his Book of Judgments, that Judgment be forthwith entered up for his Majesty, and that Execution may issue: In this Case there is a *Scire Facias* made out, signed by the Officer and filed, but never sealed; which is first enrolled, and is in the Nature of a Declaration at Common Law, and the Judgment made up as those in the Plea Side by *Cognovit Actionem*; because they would not stay the Return of two *Scire Facias*, to delay the King's Execution, nor clog the Rolls with two Writs and two Returns from the Sheriff: But when Judgment is given in Debt, there may be a *Levari* immediately; because it is an immediate Execution of the King's Judgment, and the taking out a *Scire Facias*, proceeds from the Ignorance of the Clerks, in taking out such *Scire Facias*, as if only a Bond had been sued, and there had been no Warrant of Attorney given to enter Judgment.

The Manner
of suing upon
a Bond to the
King, with
Warrant of
Attorney to
confess Judgment,
in Ireland.

The modern
Method of
proceeding in
the like Case.

But with us these Things are now set on another Foot, for the Bonds *in Pais* are by 33 H. 8. 39. made Statute Staples; and therefore the Lien is from the Time of the Acknowledgment, and a *Levari* may issue at any Time within a Year after the Day that the Money in the Obligation is payable; but if they exceed the Year, then there must be a *Scire Facias*, as in the Case of a common Statute Staple: And the Reason why they were by the Statute made of the Nature of Statutes Staple is, because they were Pocket Securities when taken by the Officer, who is not a Person authorized to make them of Record; but that the King's Revenue might not suffer by the Negligence of the Officer in bringing them up to enter on Record, they were Liens upon the Estate from the Time they were taken by such Officer; and they thought it reasonable to make Pocket Securities to be Liens upon a Man's Estate, as well in Behalf of the King's Revenue, as in Behalf of a Merchant.

C A P.

C A P. VII.

Of the Revenues arising from Estreats out of the Chancery: with the Manner of taking Inquisitions by Sheriffs and Escheators on Behalf of the Crown, and of issuing executory Process thereon.

THE King's Chancellor, for the Time being, causes the Clerks of the Chancery, to whom it doth appertain, to inroll, or cause to be inrolled, distinctly and plenarily, in the Patent Rolls of the Chancery, all and singular Charters, Letters Patent, Writs Patent, Writs Close, Commissions, Licences and Pardons of Alienations, Licences Ouster les Maines, Writs of *Diem clausit extremum*, *Mandam'*, *Amoveas*, *Quæ plur'*, and all and singular other Writs, Acts, and Instruments, which shall pass under the Broad Seal, whereby any Farms, Fee-Farm Rents, Services, Debts, Accounts, Fines, Petit or Gross Issues, or Amerciaments, Homages, Fealty, or Relief, Re-

Of the several Articles which compose the Estreats of the Chancery. Burleigh of the Excheq. 148.

version, or other Profit, or Commodity, is reserved, or may accrue, to the King's Majesty, before the same Charters, Letters Patents, or other the Premises, shall be delivered out of the Hanaper of the said Chancery.

Form of the
Estreats of the
Chancery, and
the Manner of
delivering
them.

Madox 707,
708.

Then the Master of the Rolls, yearly from Time to Time, transmits in *Estreats* of Parchments, prestwise, in a conform Measure, and of one Affize, written upon the one Side only, all and singular the said Charters, Letters Patents, Writs, and other Premises, out of the said Patent Rolls; and the same Estreats, the said Chancellor, or the said Master or Keeper of the Rolls, for the Time being, shall deliver in their own Persons, yearly, to the Barons of the Exchequer, in the Terms of *Michaelmas* and *Easter*, for Execution and Process to be made and had thereupon for the King.

How the Estreats of the Chancery shall be made up, numbered, and filed by the chief Remembrancer.

After the Receipt of the *Estreats of the Chancery*, by the Hands of the Chancellor, or Master, or Keeper of the Rolls, the chief Remembrancer of the Exchequer shall take the same Estreats, by the Delivery of the said Barons, and shall number the Numbers of Prests of the same, and shall indorse the last of them in this Manner: *Hunc librum, sive*
Ro-

Rotulum, Continen' membran', — libera-
vit hic, J. A. cancellar' Domini Regis die

Anno Regni ejusd' Domini Regis pro
Execution' inde ad opus Domini Regis fiend'.

And after that he shall file and straight-
ly bind all the said Prests together in one
Head, with a good Sirple or Ferrel of
Parchment, for the Safe Guard of the
same; and then he shall mark with his
Number (*viz.* i. ii. iii. and so forth) every
Roll of the same Estreats wherein any
Matters do commence, and not depen-
ding wholly upon the Roll preceding;
and then he shall endorse the said Sirple
or Covering in this Manner and Form:

Scilicet Original' de Anno Regis
nunc, &c. and sign it with his Name.

These *Originals* were the old Basis and Foundation of the Court of Exchequer; and as the original Writs in the Court of Chancery directed into the Common Pleas, were the Foundation of all the Civil Business; so the Originals out of Chancery were the great Foundation of the King's Court of Revenues in the Exchequer: And this Roll was to be a Charge to the Sheriffs and Escheators for that Year, and immediately upon this Roll there was Process made out for the getting in all Manner of Debts and Duties

How the Roll of originals out of the Chancery is made up; and the Process issuing thereon.

con-

The Rolls of
Affize, or exe-
cutory Writs,
made up by the
King's Re-
membrancer.

The Writs
thereon by the
second Re-
membrancer.

contained in the same: The Roll itself remained in the *King's Remembrancer's Office*; and from thence was drawn forth, and inrolled in the *Rolls of Affize* of the Remembrancer, all such Writs as were *Executory*, as Writs of Homage, Fealty, or Relief, Estreats, Issues, Fines and Amerciaments, or any other Thing reserved to the King in the said Originals, demandable by Distress, every Writ in his Nature severally by himself, directed to the Sheriff of the County where the Party defendant is conversant, or where it may be best and safest executed for the King: which Roll of Writs, so entered, the *Second Remembrancer* of the Exchequer takes, and writes out thereof all the said Writs accordingly, returnable at the Day assigned in the Enrollment; and then he files the same Writs, every Sheriff by himself, upon a File of Parchment, knit of a sure Knot, and so binds them together close, and delivers them to the Chancellor of the Exchequer, or to his Deputy there, in open Court, to be sealed with the King's Seal, and of the same Exchequer, by Bill indented between him and them, comprising the Names of the Counties, and Number of the same Writs which are sent; and he

he causes the same Writs to be sent and delivered at the King's Costs, by a sure Messenger appointed and sworn for the same, to every Sheriff to whom the same Writs be directed; which Writs, so sealed and filed, the said Sheriff receives, and opens in the Presence of the said Messenger; and then he indents with the same Messenger how many Writs and Summons he hath received of him, and what Day; which Indenture the said Messenger delivers to the Marshal of the Exchequer the first Day of the Term next ensuing, and the said Marshal safely keeps the said Indenture, ready to be shewn to the Barons at all Times, if the Sheriff be slow or negligent in executing and returning of the same Writs or Summons, &c.

The Writs sent by special Messenger to the Sheriffs who receive them by Indenture.

This was the Way of dealing with the executory Part of the Revenue; for they did not transcribe that upon the *Rotulus Magnus*, because it was no Part of the standing Revenue; and therefore the Roll was made by the King's Remembrancer from the Estreats of the Chancery, and Writs to issue to the several Officers to get in that Part of the Revenue; but the Writs themselves were made out by the Treasurer's Remembrancer

Reason for the foregoing Proceedings.

How Sheriffs and Escheators were respectively to answer on these Writs. *brancer from that Roll, and upon these Writs, the Sheriffs answer in open Court before the Barons, and the Escheators before a Baron and an Auditor: That which is the executed Part of the Revenue, as any standing Rents upon Lands*

The executed Revenue charged on the Sheriff. *in Fee, or Leases for Years, granted under the Great Seal, were drawn down into the Pipe, and there were issued in Charge, to the respective Sheriffs of each County,*

Charge on the Escheators. *by the Summons of the Pipe: but if any Lands were seized by the Escheator, and upon a Commission were so returned into the Exchequer; or if the Escheator charged himself with any escheated Lands upon his Account; then such Lands*

Lands seized by Escheators put up to Auction. *were put up to Auction, and he that would give the greatest Rent for any Term of Years, was to be the Lessee thereof; and with these Rents upon such Leases the Escheator was charged in his Account, he being the Gatherer of the same for the King.*

How the Escheator was to account, and in what Cases he might seize without an Office found, and where not. *The Escheator was to account before a Baron and an Auditor; and the Escheator might seize, without any Office found, where the Law cast the Freehold upon the King: as if an Alien purchase Lands, and dies, there the Law casts the Freehold upon the King, and the Escheator*

cheator may enter, without any Office found, by the King's Writ, because the Alien can have no Heir; but the Escheator cannot enter, in the Life of the Alien, *without an Office found*, by the King's Writ; because the Alien took by solemn Livery, which therefore cannot be defeated without Office found; for he is, *prima facie*, a Feudatory under the Crown, and therefore they did not let the Escheator or any Officer of the Crown enter upon them till an Inquisition was found, which intituled the King: Co. Lit. 2. b. so likewise, if an Alien purchase Lands, and then obtains a Charter of Denization, and dies; there if the Alien's Heir entered, since he was Co-freeman of the Charter, the Estate could not be defeated till Office found.

There were two Sorts of Offices, one of *Intituling* and another of *Instruction*. The Office of *Intituling* was always by Inquisition found, by Commission under the Broad Seal, for the King could not take but by Matter of Record; and this was a Part of the Liberty of *England*, that the King's Officers might not enter upon other Men's Possessions, till the Jury had found the King's Title: therefore where the King's Title appeared on Record

The different Kinds of Inquisitions ex officio.

Page's Case, 5 Rep. 52.

1 Rep. 41, 42, Keilw. 172,

173.

4 Inst. 225.

Office of Intituling.

Record, his Officers might enter without any Office found; as where the Lands are held of the Crown, and the Tenant dies without Heirs, the Officers of the King may enter, because the Tenure, whereby the King's Title appears, is upon Record: so, by the common Law, where Lands belong to no Body, the King's Officers may enter, because by the Law the Land is in the Crown; for the Law intitles him where the Property is in no Man: but if any Body else were in Possession, the Lands cannot be divested without Matter of Record. But notwithstanding, where the King is intitled by Matter of Record there is no need of an Office to intitle him; yet there were always Offices of *Instruction* found (that is to say) the Escheator was bound, *virtute Officii*, to hold an Inquest, *by Way of Instruction*, and to return the same into the Exchequer: and this is by the 34 *E. 3. c. 13.* as likewise 18 *H. 6. c. 7.*; and by that last Statute, such Offices are to be returned either into the Chancery or Exchequer, within one Month after the taking of the same, under the Penalty of 40 *l.*; and by 1 *H. 8. c. 8.* the Escheators were to sit in open Places, and the Sheriffs were to return
Jurors

The Court of Exchequer.

III

Jurors, and the Inquisition was to be taken by Indenture, whereof one Part was to remain with the Foreman of the Jury, and the other Part was to be returned into the Chancery or Exchequer, within one Month; and from the Chancery it was to be transcribed into the Exchequer. The Reason why it was returned into Chancery, was, because that was a Court that was always open, since the Chancellor was always an Itinerant with the Prince.

The Office of *Instruction* might either be taken by the Escheator, *virtute Officii*, or it might be taken by *Writ* from the Court of Exchequer; and both were equally Offices of Instruction: but by 33 H. 8. c. 22. the Escheator was not to sit, *virtute Officii*, where the Lands were 5*l.* per Annum or above, on Pain of 5*l.* which Statute was made, to hinder Escheators from seizing Lands by Virtue of their Office, without a Writ directed out of the Chancery or Exchequer: and it seems that the Office to intitle the Crown must be by Writ out of Chancery: But if the Freehold was cast upon the Crown, tho' the Escheator could not seize, *virtute Officii*, after the Statute; yet he might have a Writ of seizure

Office of Instruction.

Wing. Abr.
Tit. Escheat.

seizure from the Exchequer, and thereby take an Office of Instruction; because such Lands, being in the King without Office, were within the Survey of the Court of Exchequer.

These Offices of Instruction settled the annual Value of the Lands, and by that Value, the Escheators accounted; unless the Court, upon putting it up to Auction, found any Person that would give more for the Land, and then they let it by Lease under the Exchequer Seal.

Traverse of
Office.

But by the Statute 1 *H. 8. c. 10.* if any Body, pretending Title, will come in and traverse the Office, and find good Securities, then he shall have the Lease of the Land.

Process on
seizure of
Goods by
Writ of Ap-
praisement.

V. post. c. 13.

This begot the usual Process on Seizures of Goods; for when the Officer has seized, if the Port be 100 Miles distant from Town, he is to take out the *Writ of Appraisement* returnable in fourteen Days; and on this Writ of Appraisement they return the Value of the Goods as it is found by the Jury; but upon the Return of the Writ of Appraisement, the Goods are set up to cant, lest they should not be appraised according to the true Value; and if any Claim were put in, and the Goods were perish-
able,

able, the Claimer was permitted to have a *Writ of Delivery*, upon giving Security to answer the Value of the Goods; and thus the Practice touching personal Things is conformed to the ancient Practice touching real Estates.

The Commissions out of Chancery were either directed to the Sheriff, or to the Escheator, and the Inquisitions found thereon were returned in his Roll of Estreats, and the Sheriff or Escheator were accountable respectively on the Foot of such Inquisitions: If the Inquisition was taken before the *Sheriff*, then the Estreat was drawn down on the Pipe Roll; for all *Tenend*' of Patents, and all the Lands and Tenements with which the Sheriff was to be charged, were by the Clerk of the Pipe drawn out of the Grand Roll of Estreats, and placed upon the Pipe Roll, to be delivered in Charge to each respective Sheriff: And those Lands and Tenements with which the Escheator was charged, were extracted out of the Roll by the King's Remembrancer, and, together with the other Offices of Instruction issuing out of the Court of Exchequer, made the Charge of the Escheator before the Auditor and the Baron; and for these he accounted

Return of Inquisitions on Commissions out of the Chancery,
Charge on the Sheriff of Inquisitions taken by him.
Charge on the Escheator of Inquisitions taken by him,

I annually:

annually: and these Rolls were transcribed upon the Accountant's Roll, which was transferred into the Pipe Office, and there lodged as Part of the Archives of the Year.

Pipe Roll and Accountant's Roll.

So that the *Pipe Rolls* are the current Rolls of the Year, consisting of the *Pipe Roll*, so called by Way of Eminence, which was the current Charge on the Sheriff; and the *Accomptant's Roll*, which was the current Charge on the other accountable Officers.

Contents of the Pipe Roll.

The *Pipe Roll* consists of the Articles with which each particular Sheriff is to be charged, set down in that Roll in the Alphabetical Order of the Counties; and from that Roll they transcribed the Charge of each particular Sheriff, and before each Charge they marked R. C. or C. R., (that is) *reddit Computum* (as is before mentioned), and the *Writ of the Summons of the Pipe* issued on, and was annexed to, such Charge; and the Form of the Writ is such.

Form of the Writ of the Summons of the Pipe.

Georgius Dei Gratia, &c. Vicecom' B. salutem: Vide, sicut te ipsum & omnia tua diligis, quod sis coram Thesaur' & Baron' de scaccario, apud Westm' in cro' clausi Paschæ prox' futur', et habeas ibi tunc quicquid nobis debes, de novis & veteribus

veteribus firmis, & omnia Debita subscripta, & hanc summon de Pipa. Teste A. B. Thesaur Angliæ, apud Westm 12 die Februarii Anno, &c.

This Writ issued twice a Year, the first When issued in Hillary Term, returnable at the Utas of Easter, and to this Writ they annexed the Vetera Debita, or the Remainder of the Account of the last Year; the other Summons of the Pipe issued in Trinity Term, returnable at the Utas of Michaelmas, and then he was charged with the Nova Oblata, or Accounts of the present current Year: Upon these two Processess the Sheriff is apposed before the Cursitor Baron, and if the Sheriff has levied any Part of these Debts he Totts it, and the Letter T is set upon such Sum: And it is to be noted that the Summons of the Pipe is in the Nature of a Fieri facias, and the Sheriff, by Virtue thereof, can levy the Debt upon the Goods and Chattels of the Debtor; for tho' the Lord could only distrain in order to compel Payment of his Rents; yet the King could not only distrain, but sell: And the Reason of this Difference was, because it was a dangerous thing to trust private Lords to alter the Property of their Feudatories, in order to answer

and when returnable.

Apposal of the Sheriff and totting of Debts.

Force of the Summons of the Pipe.

their Rents; but all the King's Writs issue by his Ministers, and with great Care and Exactness, and it is presumed, that he is as much concerned for the Rights of his People as for his own; and therefore, in behalf of his Publick Treasure, *in the first Instance*, the Sheriff may levy such Rents upon the Goods and Chattels of the Debtor.

Rent paid on Tally, to be Onied.

A Man might pay in his Rent to the Crown at the Receipt of the Exchequer, and take a *Tally*, and then the Sheriff did not *Tott* it, (because he had not levied it,) but *onied* it which was writ upon the Roll in this Manner [*O'ni* or *O*,] (that is to say) *Oneretur nisi Exoneretur*.

Enrolment of Tallies.

Therefore by 27 E. 1. c. 2. the Sheriff was not to levy any *Estreats* before they were brought in Charge by the Summons of the Pipe; and there was Care taken, by that Statute, that such Tally should be *enrolled*: And it seems, that, to prevent the Baron and Clerks going into every County and inrolling the Tally, as that Statute directs, they inrol them at the Time when such Tallies are struck; and from the Enrolment of such Tally the Sheriff procured an Order of Discharge, and then *Exon'* was entered to that *Debet*, on the Margin of the Pipe Rolls.

Exoneretur.

But

The Court of Exchequer.

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But if the Sheriff *nichilled* any particular Item, such Item is put into a Schedule, called *Schedula Pipæ*, and this *Schedula Pipæ* is sent down to the Treasurer's Remembrancer, and he makes out the *long Writ*, in order to get in that Debt; and upon such long Writ, the Sheriff accounts in open Court, before the Baron.

Of Nichilling Debts, and the *Schedula Pipæ*.

Long Writ.

The Form of the Writ is such :

Georgius Dei Gratia, &c. vicecom' Hertford' Salutem: Præcipimus tibi quod non omit', propter aliquam Libertat', quin eam ingred', & de Bon' & Catall', Terr' & Tent' separal' person' in Sched' huic Br'i annex' nominat', & ear' cujuslibet, in Bali' tua, fieri fac' separal' Denar' sum' super ipsas & ear' quaslibet in dict' Sched' respective onerat', sive ab eis & ear' qualibet exact'; ita quod Denar' ill', cum sic levaveris, h'eas coram Baron' de scaccario nostro, apud Westm', indilate, & de Tempore in Tempus, ut eas levaveris; & si forte, Bon' & Catall' Terr' & Ten'ta earund' separal' person' non suffic' ad soluc' separal' sum' in sched' præd' super ipsas respective onerat', tunc non omitt', propter aliquam Libertat', quin

eam ingred', & corpora præd' separal' person', & ear' cujuslibet, (Magnat' Dominis & dominabus except') cap', ac in prison' nostras, donec nobis de debit' præd' plene satisfecer', salvo custod'; ac tam, per sacr'um probor' & legal' hominum de Ball' tua, vel al's per sacr'um & testimonium aliquor' probor' & legal' hominum de ead' Ball' tua, per quos rei veritas melius scir' poter', quam omnibus aliis viis mediis & modis, quibus melius sciveris aut poteris, diligent' inquir', quas Terr', & quæ Ten', & cujus annui valor', eadem separal' person' habuer', aut ear' quælibet h'uit, in dict' Ball' tua, separal' dieb' & annis, quibus nobis, de separal' debitis in Sched' præd' mentionat', primo debitor' inde deven', seu unquam postea hucusq; nec non quæ, & cujusmodi bon' & catall', & cujus pretii, ead' separal' person' modo habent, aut ear' quælibet habet, in dict' Ball' tua: Ac si forte, præd' separal' person' in Sched' præd' no'iat', aut ear' aliqua, dies suos clauser', sive diem suu' claus' extremu', tunc non omit' propter aliquam libertat', quin eam ingred', ac per sacr'um præfat' probor' & legal' hominum diligent' inquir', quibus diebus & annis, ac ubi, præd' separal' person' obier', aut eor' quælibet obiit, ac quæ

quæ & cujusmodi Bon' & Catall', & cujus pretii, ead' separal' person' modo h'ent, aut ear' quælibet h'uit, in dicta Ball' tua, separal' diebus & Annis, quibus obier', aut ear' quælibet obiit; ac ad cujus vel quor' man' ead' Bon' & Catal', post mortem præd' separal' person' sic defunct', deven'; ac in cujus vel quor' man' jam existunt: Nec non quas Terr', & quæ Ten', & cujus Annui valor', præd' separal' person' sic defunct' h'uer', aut eor' quilibet h'uit, separal' Diebus & Annis quibus nobis, de separal' Debit' in Sched' præd' mentionat', primo Deb'or' deven', seu unquam postea hucusq'; ac quis, vel qui, exit' & profic' Terr' & Tent' præd' separal' person' sic defunct', a Tempore mortis eorund' hucusq' provenien', percepit & habuit, perceper' & h'uer', ac modo percipit & h'et, percipiunt & h'ent: Ea q' omnia & Singula præd' Bon' & Catall', Terr' & Tent' præd' separal' person', tam superstit', quam defunct', in quorumcunq; man' jam existunt, per sacr'um præfat' probor' & Legal' hominum, diligent' appretiari et extend', ac in man' n'ras capi & seisir' fac', ut ea, quousq; nobis de separal' debit' præd' plene satisfac' fuerit, h'eamus, juxta form' Statut' pro hujusmodi debit' n'ris recuperand' inde

nuper edit' & proviſ': ita quod, de Bon' & Catall' ill', aut de pretio ſive valor' inde, ac de exit' & profic' Terr' & Tent' præd', ſic in man' n'ras capt' & ſeiſit', nobis reſpondere poſſis, ad volunt n'ram; ac quæ, et cujuſmodi, Bon' & Catall', & cujuſ pretii, ac quas Terr' & quæ Tent', et cujuſ Annui valor', earund' ſeparal' perſon', in Man' n'ras occ'one hujus Br'is n'ri captas, ac ubi unacu' tempore Caption' earund' in eaſd' Man' n'ras, Baron' de Scaccario n'ro apud Weſtm', a die Paſch' prox' futur' in tres Septiman', diſtincte & aperte conſtare fac': Ac tibi ulterius præcipimus, & poteſtatem damus per præſentes, ad quaſcunq; perſon' in præmiſſ' examinari idon', coram te evocand', ac de & in eiſd' præmiſſis diligenter examinand', ne hoc præſens Mandat' n'rum reman' ulterius exequend': Tibi etiam præcipimus, modo ſupradicto, quod diſtr' omnes Exec' Teſtamenti & ult' voluntat' ſeparal' perſon' ſic defunct', ac Admin' & Occupat' Bon' & Catall' quæ ſua fuer' tempore Mortis ſu', nec non hæred' & Ten', Terr' & Tenem' quæ ſua fuer' ſeparal' Diebus & Annis, quibus nobis, de ſeparal' debit' præd' ſuper ipſas in Sched' præd' reſpect' onerat', primo debitor' deven', ſeu unquam poſtea hucusq; per omnia Terr' &

Et Catall' sua in Balliva tua, ita quod nec ipsi, nec aliquis per ipsos, ad ea Man' appon' donec al's inde tibi præcipimus, Et quod de Exit earund' Terr' nobis respond'; ita quod h'eas Corpora eor' coram præfat' Baron' n'ris, ad dict' Diem Et locum, ad respondend' pro præd' separal' person' de separal' debit' præd' super ipsas in Sched' præd' respect'ive onerat', unde nobis nond' est respons'. Proviso semper, quod si deb'or' n'ri, aut eor' aliquis, Tall', Acquietan', sive al' exonerac', de aut pro Soluc' separal' sum' præd', aut alicujus inde partis, ostenderint sive allegaverint, tunc accept' de eis prius sufficien' securitat', præfigas eis, et ear' cuilibet, diem essendi hic ad dict' scaccar' n'rum, ad recipiend' super præd' Tall', Et c. quod Justic' in ea parte cons'; Et interim Levac' denar' sum' in Tall' sive acquietan' præd' content' supersedeas; Et h'eas ibi tunc nomina Exec' Et al', Et hoc Breve. Proviso quod Bon' Et Catall' ill', quæ in Man' n'ras occ'one hujus Br'is n'ri capies, non vend' nec vendi fac' quousq; alit' a nobis habueris in Mandat'. Teste Roberto Eyre Mil' apud Westm' 12 Die Februarii Anno Regni nostri 10 pro divers' Obl' in Scaccario nostro remanen', ac ibidem in Custod' Rememorator' n'ri exist', ac per
Aet'

*Act in Parl' Anno 33 Regni nuper
Regis Henrici Octavi Tent' Edit': Et
per Barones.*

Masbam.

The Force
and Operation
of the long
Writ ex-
tended to the
Goods, Per-
son, and
Lands of the
Debtor, and
why.

This *long Writ* is a Process both upon the *Goods, Person, and Lands* of the Debtor, in order to get in the Money to answer the King's Debt: The *Goods* were liable as they were to answer the Debts of a common Person; and the *Lands* were liable according to the old Feudal Law; where the Lord might enter and seize in order to answer the Debt. It is plain, that for the Money reserved in a Patent the King may enter as for a Forfeiture on Non-payment of the Rent reserved upon such Land; this is according to the old Feudal Law, expressed in these Words: "*Illud non latet, quod si quis suo Domino Justiciam facere noluerit, Feudum quod tenebat perdet*"; and this arose from the original Promise of Fealty, which included a Contract to pay all present and future Debts due to the Lord, and if the Fealty were broken the Feud was lost; for the same Cause likewise, the King seized the *Body* of the Debtor, because by the Promise of Homage and Fealty he was
his

Vigell' 271.
Lafius 161.

his Servant, and by consequence his Body was liable as well as the Lands to answer such Debt.

This was not admitted in the Case of *Inferior Lords*, for they could *not seize* could not seize, but only di- for their Rents, and Debts recovered in strain for their their Courts: And this was agreeable to Rents, and Reason and Policy; because it was not Debts reco- fit that the Subject's Body and Land vered in their should be totally in the Power of his Courts. Lord; for that would have given the Lords too much Power against the Crown, and would have subjected the Inferiors to the Will of such Lord, tho' it was not agreeable to Reason and Justice: And therefore they were only permitted to levy their Feudal Duties and Debts recovered in their Court by *Distress*. But the King retained the Pre- The Abuse of rogative that was given by the ancient the King's Feudal Law; though it was still reckon- Prerogative in ed an Abuse of the Prerogative, if the seizing the King seized the Lands or Person of the Lands or Per- Debtor where there were Goods sufficient son of the to answer the Debt; and therefore this Debtor where was settled as Part of the Liberty of the he had suffi- Subject by *Magna Charta*, c. 8. "*Nos* cient Goods "*vero vel Ballivi nostri non seifimus Ter-* prevented by "*ram aliquam, vel redditum, pro debito* Magna "*aliquo, quamdiu catalla debitoris præ-* Charta. "*sentia*

“*sentia sufficiunt ad debitum reddendum,*
 “*& ipse debit' paratus sit inde satisfacere.*” By this Means the Abuse of

The Practice
 in regard to
 issuing the
 long Writ be-
 fore 33 H. 8.

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Stat. 33 H. 8.
 c. 39.

Magna Charta until 33 H. 8. c. 39. where it is enacted, “That all and
 “every Suit and Suits, which hereafter
 “shall be had made or taken, of, for, or
 “upon any Debt or Duties, which here-
 “tofore hath grown or been due, or
 “that hereafter shall grow or be due to
 “the King, in the several Offices and
 “Courts of his *Exchequer*, Dutchy of
 “*Lancaster*, Augmentations of the Re-
 “venues of his Crown, Surveyors Ge-
 “neral of his Manors, Lands and Te-
 “nements; Master of the Wards and
 “Liveries, and Court of the First Fruits
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 “by Reason or Authority of any of
 “them, shall be severally sued in such
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 “ in the which Court and Office, or by
 “ Reason of the which Court and Of-
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 “ fices and Courts under the several Seals
 “ of the said several Courts, by *Capias*,
 “ *Extendi facias*, *Subpœna*, *Attachment*
 “ and *Proclamations* of Allegiance, if
 “ need shall require, or any of them, or
 “ otherwise, as unto the said several
 “ Courts shall be thought by their Dis-
 “ cretions expedient for the speedy Re-
 “ covery of the King's Debts.”

From hence forward they might issue
Capias's, *Levari's*, or *Fieri facias's*, at
 Discretion, to levy the King's Debts; but
 these Writs are never issued, but upon
 Affidavit made, that the King's Debt is
in danger, and then the Court, or a
 Baron at his Chamber, permits them to
 issue such Writs. It is common in the
 King's *Fieri facias* likewise to insert a
Capias: Instances of which you may
 see

Since 33 H. 8.
Capias, *Fi. fa.*
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see in the *Br'ia Scaccarii* 421, 422, 423, 424. *Tremaine's Entr.* 632.

Levari only
issues on Out-
lawries.

So also they may issue a *Levari facias* by such Leave of the Court; and upon all Outlawries they only issue a *Levari facias*, because the Lands are not forfeited but the Rents and Profits only.

Br'ia Sc'ii 438, 439, 440, 441.

Writ of Ex-
tent.

They may also have for the King's Debt a Writ of *Extent*, which is to seize the Lands and Tenements, and to appraise them, and take them into the King's Hands, until he is satisfied his Debt. *Br'ia Sc'ii* 414, 415, 416, 417, 418, 419. *Trem. Ent.* 594, 595, 637.

The usual
Process for
levying the
King's Debt,
according to
my Lord Coke,
after 33 H. 8.

My Lord Coke says, that after the 33 *H. 8. c. 39.* was made for levying of the King's Debts, the usual Process to the Sheriff was, "*Quod diligenter, per Sacram' probor' & Legal' hominum de Balliva tua, &c. Inquiras, quæ, et cujusmodi Bona & Catalla, et cujus pretii, idem (debitor) h'uit in dicta Balliva tua, &c. Et ea omnia capias in Manus n'ras, ad valentiam debiti præd', & inde fieri fac' debitum præd', &c. Et si forte, Bona & Catalla præd' (debitoris) ad Solutionem debiti præd' non sufficerent, tunc non omitt', propter aliquam Libertat',*"
"quin

“ *quin eam ingrediariis, & per Sacr'um*
 “ *præfat' probor' & legal' hominum di-*
 “ *ligenter inquiras, quas terras, & quæ*
 “ *tenementa, & cujus annui valoris, id'*
 “ *(debitor) habuit, seu seifitus fuit, in*
 “ *dicta Balliva tua, &c. Et ea omnia*
 “ *& singula, in quorumcunq; manibus*
 “ *jam existunt, extendi fac', et in man'*
 “ *n'ras capias, &c. Et capias præd'*
 “ *(debitorem), ita quod habeas corpus*
 “ *præd' (debitoris) ad satisfac' nobis de*
 “ *debito præd'.*”

My Lord Coke says this Writ was made *since the Statute*; but of this I have great Doubt, because it seems so contrived that an Inquisition should be found whether the Debtor had any Goods, and Chattels, and if upon the Inquisition there were none found, then to extend the Land, and to take up the Body of the Debtor: So that it seems that this Writ might have been used, before the Statute of *H. 8.* without any Violation of *Magna Charta*, for if it were found that the Debtor had no Goods, they might seize the Land, and take the Body; and therefore it seems to be a Writ that was used upon Motion to the Court, and in Cases of Necessity, before the Stat. of *H. 8.* but *since* that Statute they

Recognizances for per-
forming De-
crees of the
Chancery
Court
and not into
the Exche-
quer.

Doubt as to
the foregoing
Assertion of
my Lord
Coke.

they may have a *Capias*, *Levari*, or *Extent*, without any such Inquisition touching the Goods.

Recognizances for performing Decrees of the Chancery estreated into that Court and not into the Exchequer.

N. B. That there are no Recognizances estreated out of the Petty Bagg into the Exchequer, to be transcribed on the Great Roll; nor do they make any Part of the *Extractus Magnus*, because such Recognizances, being for performing Decrees of the Court of Chancery, are taken to the Master of the Rolls and one of the Masters of the Court, and not to the Crown; and therefore are sued there, and nothing is estreated: And the Statute Staple and Statute Merchant are estreated into Chancery, by the Statute, and from thence Execution is to go.

C A P.

C A P. VIII.

Of the Casual Revenue: And herein of the Nature of Fines and Amerciaments, and of the Manner of estreating them.

WE come now to the *Casual Revenue*; and that arose out of *Of the Casual Revenue.*
Fines and Amerciaments. The *Fines* *Fines what,*
 were properly set in Criminal Proceedings, and were estreated by the King's Bench and Justices in *Eyre* into the *Exchequer*: These Fines were set by the Court as Ransoms from Imprisonment, *how set and estreated;*
 as appears by the Accounts of Fines and *Vide ant. pa. 64, 65, and 85.*
Amerciaments. And the *Amerciaments* *Amerciaments, what,*
 by *Magna Charta* were to be affeered, *how set,*
 and these were to be set in the *Common Pleas* in Civil Actions, either on the Plaintiff *pro falso clamore*, or on the Defendant for detaining a just Debt: *affeered and estreated*
 These Amerciaments were delivered over by the Clerk of the Warrants to the Clerk of Assize, who used to deliver them to the Coroners of the Counties, who *affeered* such Amerciaments as in-
 K different

different Persons of the Neighbourhood elected by the whole County; and after the Coroners had affeered such Amerciaments, they delivered them back to the Clerk of the Assize, and he redelivered them to the Clerk of the Warrants, and from thence they were estreated by the Judges into the *Exchequer*. But the Judges of the *King's Bench*, having a civil Jurisdiction over their Prisoners, they were wont to order Amerciaments, and send them down to be affeered: And so the *Common Pleas*, in Actions of Trespass which were *Vi & Armis*, set Fines on such Trespassers; which were estreated into the *Exchequer* without any Affeement. But from the Time that Justices of the Peace were appointed, the casual Revenue very much encreased, and this was by 1 *E. 3. c. 16.*

Vide ante
pa. 83.

Estreats of
Recogni-
zances to Ju-
stices for Ap-
pearance.

Before that Time, Indictments were found at the Torn before the Sheriff, and he issued his *Capias*: But after the Justices of Peace were appointed, the Justices issued their Warrant in order to apprehend the Offender; for, being assigned to keep the Peace in each particular County, they could issue their Warrant in order to take up an Offender; and if it were aailable Offence, they bound

bound him over by Recognizance, either to appear at the Assizes, or Quarter Sessions, and likewise bound over the Evidence to prosecute; and if the Prosecuted, or Prosecutor, did not appear, such Recognizance was forfeited, and the Clerk of the Sessions, or of the Peace, respectively, estreated such Recognizance into the *Exchequer*.

This so encreased the Casual Revenue, that the Comptroller of the Pipe could not undergo the Burthen of the whole Work, and therefore a new Officer entitled the *Clerk of the Estreats* was introduced, to write the *Summons of the Greenwax*, in Assistance of the Comptroller of the Pipe; so that the *Summons of the Greenwax* is the same Writ, *totid' Verbis*, with the Summons of the Pipe, only issued by a different Officer; and the Charge of the Casual Revenue is annexed to such Summons of the Greenwax: When it issues to the Sheriff the Sheriff is to levy the same: And the Sheriff upon this Process of the Greenwax is to account before the *Foreign Apposer*, which *Foreign Apposer* was instituted at the same Time with the Clerk of the Estreats: He was called *Apposer* for the same Reason that such Accounts

Institution and Duty of the Clerk of the Estreats.
Vernon 3. Vide pa. 85.
Summons of the Greenwax issued to the Sheriff, and the Manner of his levying and accounting thereon.
Institution and Duty of the Foreign Apposer. Vide pa. 86.

The Court of Exchequer.

of Sheriffs are called *Apposals* (that is to say) because the Sheriff was then *Apponere*, or to place his *Items* to Account; and the Sheriff before such Apposal did *Tot*, *Nichil*, and *O'ni*, according as the Case required. This Officer was called the *Foreign Apposer*, because the Account on which he sat was called the *Foreign Account*; for the Account of the Certain Revenue was the original Jurisdiction of the Court of *Exchequer*, and belonged to that Court from the Originals sent from the *Chancery* into that Court; but the Casual Revenue did not arise out of such Originals, but was sent into the *Exchequer* by *Estreats* out of other Courts, and therefore was called the *Foreign Revenue*.

How Lords of Leets and Liberties are to claim Fines, and Amerciaments.

If any Lords of Leets or Liberties claim any Fines and Amerciaments, they are to appear before the Foreign Apposer at the Time when the Sheriff is apposed, and there they must claim such Fines and Amerciaments as belong to them, and if their Claim be allowed, such Fine is set off to the Claimer.

The Rolls of Estreats and of Nichils, how made up.

When the Account is gone thro' before the Foreign Apposer, the Clerk of the Estreats and the Clerk of the Nichils meet and make up two Rolls: The one, of

of those Sums which the Sheriff has *tot-
ted*, which is entered upon the Pipe Roll,
to be a Charge upon the Sheriff in his
final Account; the other is a Roll of
Nichils, or of the Debts which the She-
riff has nichilled: These are likewise
drawn down into the Pipe, and 'tis usual
to issue the Summons of the Pipe in or-
der to levy the same. But this is cer-
tainly an unnecessary Proceſs, and ſpends
a great deal of Time to no Purpoſe,
ſince they have been already in Charge
by the Summons of the Greenwax:
This ſeems to have been at firſt iſſued in
Proceſs by the Pipe *ex abundantia cau-
telæ*, that it might appear, that they had
ſatiſfied the Statute of *Magna Charta* be-
fore they iſſued the long Writ: But the
Truth of it is, this is an unnecessary De-
lay, for it coming to them out of the
Office of the Greenwax, *nichilled*, that
would have been ſufficient Authority for
them to tranſmit it in *Sched' Pipæ*, for
Magna Charta is ſatiſfied, ſince it ap-
pears on the Summons of the Greenwax
that they had no Goods nor Chattles,
and therefore to iſſue the Summons of
the Pipe is unnecessary.

The Practice
of iſſuing the
Summons of
the Pipe on
theſe Articles
condemned as
unnecessary.

When any Debt was of *Record*, they
could not diſcharge it *but by Matter of*
Record; Debts on Re-
cord not to be
diſcharged but
by Matter of
Record.

The ancient
Practice in
discharging
Debts to the
King on Re-
cord.

Record; for tho' in some elder Times, the Court of *Exchequer*, wherein the King's immediate Justiciar sat, did discharge, compound, and atterminate, Debts; yet, after that Jurisdiction was broken, they never did it, till the Statute of *H. 8.*, without the King's Leave. The Justiciar was reckoned the *Custos Regni*, and therefore he did every Thing in the King's Absence, as the Stewards of Lords acted in their Courts Baron; and as the Steward with the *Pares* acted between the Tenant and the Lord, so the Justiciar together with the *Pares* of the *Exchequer* acted between the King and his Subjects; it being according to the true feudal Notion, that the Steward together with the *Pares Curiae*, should act between the Lord and his Vassal; and to this Sort of Constitution we may refer the Precedents that are mentioned in *Maddox* 679.

The more
modern Prac-
tice in that
Respect.

But when the Power of the Justiciar was broken, the King reserved to himself the Power of issuing his own Treasure: For that being a Matter of Grace and Benevolence, and not of Justice and Rigour, it was a proper Policy in our great King *Edward* the First, to reserve that Power wholly to himself; and therefore
none

none of the King's Treasure paid into the *Exchequer* could issue, without a *Liberate*, which was a Writ under the Great Seal, or an Authority under the Great, or Privy Seal, for issuing such Sum of Money: And as the King, on the Criminal Side, reserved to himself the Power of pardoning capital Offenders, but committed to the Judges the Severity of the Law, that he might have the Grace of his own Mercy; so it was committed to the Judges of the *Exchequer*, to get in the Money, but the issuing of it, was in the meer Power of the Crown alone, as we shall see more hereafter.

The Nature of the Writ of Liberate.

But as in the *Inferior Exchequer* the *Barons* could not issue the Money, but the *Officers*, there must have been a *Liberate*, by Writ, or a Great or Privy Seal, by way of Authority to issue the Money; so in the *Superior Exchequer*, when a Debt was of *Record*, they could not discharge that Debt, without a Pardon under the Great Seal, or an Acquittance under the Privy Seal, discharging the same; and this is on the same Policy; that the King might have the Grace of all Discharges of that Kind, but that the Rigour of exacting and getting in the

Debts on Record to the King not to be discharged by the Exchequer, but by Pardon under the Great, or Acquittance under the Privy Seal.

Debts might lie upon his Ministers; for it was not fit that the Minister should make himself popular at the Expence of the Prince. Hence are the Instances of discharging Debts by the King's Pardon. *Maddox* 691.

Or by Writ
under the
Great Seal.

So likewise they often discharged Debts by Writ under the Great Seal, of which you have Instances in *Maddox* 685. And so they might discharge them by Acquittances under the Privy Seal, for this could not be done without the Act of the Crown.

Such Debts
not to be at-
terminated
without Writ,

So likewise they could not *atterminate* the King's Debts, which was giving them Leave to pay the Debt by Instalment, without a Writ for that Purpose directed to the Court; as we see in *Maddox* 678, 679.

nor respited.

So likewise they could not *respite* Debts without a Mandatory Writ for that Purpose, as we may see in *Maddox* 681.; because these were Acts of Mercy which cannot proceed but from the Crown.

C A P. IX.

Of the Transactions of the Exchequer with Respect to Receipts and Payments : The Manner of accounting by Tally ; and the Cheque thereby obtained on the several Officers.

WE come now to the Receipt of The Manner of receiving Money by the Exchequer. the *Exchequer*. When any Man pays Money into the *Exchequer*, he pays the Sum in to the *Teller*, and the *Teller* makes a Bill in Parchment for the Sum so paid in ; which contains the Christian and Surname of the Party, his Office, and the Day of the Payment of the Sum paid in, in numeral Letters ; this is thrown down thro' a Pipe into the *Tally Court* ; then the *Tally Cutter* prepares the Tally, which is notched according to the Sum mentioned in the Bill, (*viz.*) a greater Notch for (M), a lesser Notch for (C), a lesser Notch for (X), and a lesser Notch for single Pounds ; and for Shillings and Pence the Tally is Form of the Teller's Bill. The Form of Tallies, with the Manner of preparing, entering and striking them. but

but slightly cut with the Knife: The *Auditor of the Receipt*, who was anciently called the *Receptor Talar*, writes a *Duplicate* upon the Wood of the Tally, of the Contents of the Parchment Bill and the Sum, which is written in numeral Letters in the Bill and expressed by Notches upon the Tally. Then the *Clerk of the Pells* enters the Bill in his Book; and then the *Scriptor Talar* reads the Tally, the Clerk of the Pells at the same Time looking into his Book, to see that his Entry and the Tally agree together; and then the *Chamberlains* strike the Tally, (that is) divide it into two, and the Tally or Stock is given to the Party, and the Foil or Counterpart is left with the *Chamberlains*, and the Bill is carried away and foiled by the *Auditor*.

The Cheque
of the several
Officers on
one another
from this
Kind of Re-
ceipt.

In this Manner of accounting there are several Things to be observed; first that the *Superior Exchequer*, which charges the Accountant, is perfectly distinct from the *Inferior Exchequer*, where the Money is paid in, by which he is to be discharged; and the Reason of this is, that there may be no Collusion to charge or discharge the Accountant for less than what is due: For, if
I he

he were to tot at the same Place where he pays, there might be a Collusion with the Accountant; therefore when he pays in at the Teller's Office, the Teller makes out a Bill as a Warrant for the Accountant's Tally, and the Teller sits apart from the Tally Court, because the Tally is to be a Charge upon the Teller for the Money; and therefore it is, that the Auditor takes away the Bill with him, in order to charge the Teller; and the Chamberlain takes away the Foil or Counter-Tally, in order to check the Discharge of the Accountant; for the Accountant must come to the Chamberlain's Office and get his Tally joined, and that is marked by punching by the Chamberlain, and sent up by a Messenger into the Pipe, and is there kept by the Pipe, as a Voucher for them to allow the Sum in Discharge of the Accountant; so, that as the Tally and Counter-Tally check the Discharge of the Accountant before the Account is made up, so they are Vouchers to the Pipe in allowing that Discharge to the Accountant.

Money was never issued but by the Great or Privy Seal, and anciently, there were Writs of *Liberate* for the Payment of Money on any Debts due from the Crown,

The ancient and more modern Manner of Payment by the Exchequer.

Crown, or on any Grants made of any Sums; but afterwards they were wont to grant Patents or Privy Seals to the Treasurer, giving him Authority to issue Warrants for the Money. The Writs were anciently directed to the Treasurer and Chancellor, and therefore the Warrants are at present signed by the Treasurer and Chancellor, and mention the Authority of the Broad Seal by which they issue. These are entered and recorded by the *Auditor*, and he draws his Bill upon the *Teller*: Then these are entered in the *Office of Pells*, on the *Pellis Exitus*, and go from thence to the *Teller*, where the Money is paid.

The Cheque
of the Officers
on one ano-
ther in this
Manner of
Payment.

And herein many Things are to be observed: First, That it was only the *King's own Seals* that could be an Authority for the issuing of the publick Treasure, and therefore the Chancellor and Privy Seal were a Check upon the Treasurer in issuing the Money, and the Chancellor and Privy Seal could not put the Seal but by an immediate Authority from the King. Those Things that were *publick and open*, as the Payment of Debts and public Salaries, issued by the *Great Seal*. Those Things that were *private*, as Money issued for secret Services,

vices, issued by the *Privy Seal*, and upon such Seals the Treasurer had Power to issue his Warrants. The next Thing observable is, that the Teller and *Receptor Talar* were Counter Checks one upon the other: For the *Receptor* carried off the Bill of the Clerk of the Pells, and the Teller laid up the Warrant directed to him by the Auditor, in a Chest, as a Voucher for his paying the Money; so that the Bill and the Warrant were Counter Checks upon each other; one at the one End of the Receipt, the other at the other End: The Clerk of the Pells, is as it were the central Power in the Court of Receipt, and checks the Teller by his *Pellis Introitus*, and checks the Auditor by his *Pellis Exitus*; he likewise serves for another Purpose, to give the Treasurer at one View the whole State of the Revenue: And therefore was properly placed in the Middle, between the Entry, and Issuing of the same.

The next Thing observable is the *Tally*; this was the plain Way of accounting among Countrymen, and therefore must be very ancient: For there cannot be a more simple and plain Way of keeping Accounts than by cutting Notches

Observanda
on the Me-
thod of ac-
counting by
Tally.

Of the ancient Offices of the *Pesour* and *Fusour*.

Tellers appointed in the Place of the *Pesour* and *Fusour*.

Quietus of the Accountant.

Notches on a Stick; and therefore it was very well adapted to the accounting with the King's Tenants, who were plain Countrymen, and originally delivered in their Rents in Corn and Cloth; therefore anciently there was in the Receipt of *Exchequer* a *Pesour* or *Ponderator* and a *Fusour*. The *Pesour* or *Ponderator*, was the Person that received the *Weight* of the Corn and Cloth that was brought in for the Rent; and the *Fusour*, received the *Weight* of the Bullion, in which Rents also were originally paid, of which see *Maddox* 739, 740.

These, when they had received Quantities of Corn or Bullion, gave an Account in Figures to the Receiver of the Tallies, who made out the Tally in Manner herein before mentioned; but when Bullion came to be coined, and Rents used to be paid in Money instead of Corn, &c. then the *Tellers* were appointed Officers, instead of the *Pesour* and *Fusour*, and by Consequence they conveyed their Bill to the Receiver, instead of those other Officers.

When the Accountant had got his Tally from the Tally Court, then he went up into the superior *Exchequer* to close his Account; and here the first Step was

was to go into the Chamberlain's Office to join their Tally; and if the Tally joins, then the Chamberlain marks it, and then the Clerk of the Pipe sends a Messenger to the Chamberlain, who receives such marked Tally, and that being brought into the Office of the Pipe, the whole Charge and Discharge is brought together in Order, for the Accountant to receive his *Quietus*.

The Reason of this Step is plain, (*viz.*) to prevent the superior *Exchequer* being imposed upon by false Tallies; for they carried them to the Chamberlain, to see if the Tally would join with the Counter Tally, and after such Joining, it was never left in the Hands of the Accountant, that he might not change or alter it.

Reasons for
the foregoing
Manner of
accounting.

C A P. X.

Of the antient and modern Manner of passing and discharging the Accounts of Sheriffs and Escheators : And the Proceſs againſt Defaulters.

Of the ſeveral
Heads of Account of the
Sheriffs,
Eſcheators,
and other
Officers of
the King.

The Account
of the Sheriffs
for their
Proffers,

and Eſcuage.

WE come now to Sheriff's Accounts. The Sheriff is the King's Bailiff of his County, and there were ſeveral Farms of the County that were under the particular Care of the Sheriff, (as is herein before mentioned) that is to ſay, all thoſe Farms that were held of the King *as of his County*; theſe were under the Survey of the Sheriff, and he was charged with them, being obliged to answer them in all Events; and for theſe he pays in his *Proffers*, becauſe they were reckoned Part of the Profits of his Bailiwick.

The Lands of the Tenants *in Capite*, if they held by Knight's Service, generally ſpeaking, answered no Rent: But the *Eſcuage*, when it was aſſeſſed was gathered by the Sheriff, unleſs where the particular

particular Lords paid in their Escuage, and had Commission for gathering it on their Tenants.

As to the Tenants in *Ancient Demesne* and *Socage* Tenants, they generally paid in their Rents themselves, as being immediate Farmers and Accountants to the King; and if they were in arrear, it seems that the King's Remembrancer issued the *Distringas* against them, and further Process, because they were Accountants to the King.

The Tenants of Antient Demesne Lands, and Lands held in Socage accounted for their Rents.

If any Body held Lands of the King *ut de honore* of any particular Place, the King's Reeve of that Honour or Manor gathered the Rents, and accounted for them in the Exchequer.

The King's Reeves for Rents of Manors held *ut de honore*, &c.

If any of the Lands within the County *escheated*, anciently, the Escheator, till restrained by the Statute, might hold an Inquisition *Virtute Officii*, and thereby enter into the Lands, and (as we have said) was charged with the Profits of them.

The Escheator, till the Statute, for the Rents of *escheated* Lands.

But either the Sheriff or the Escheator might give Information in Chancery, and take Inquisitions *Virtute Brevis*, and he that first gave Information, generally had it under his Survey; and therefore the Sheriff and Escheator lay upon the

Either the Escheator or Sheriff might take Inquisitions *virtute brevis*.

L

Watch

Watch to return Lands, and take out such Inquisition; but however, they held the escheated Lands no longer than till a Bailiff was appointed; and after the Appointment of a Bailiff, he was accountable to the Crown, and paid in that particular Rent by Tally, and obtained a *Quietus*, in the same Manner as Sheriffs and other Accountants do.

The particular Manner of the Sheriff's accounting, and the Process against Defaulters.

The Sheriff is a Patent Officer of the Crown, and is constituted the King's Bailiff to gather his Rents; and therefore after such Constitution, the first Thing is to prefix him a Day to account; and there were two Days prefixed, one after the *Utas* of *Easter*, the other after the *Utas* of *Michaelmas*; and these were called his proffers, because he did then *proferre* the King's Rents; they gave him two Times in a Year, because the Rents were generally payable Half-yearly. It is the Duty of the Sheriff therefore to come at the Day of Prefixion, and if he does not, he is considered as an Accountant in Default; and therefore a Fine of 5*l.* *per Diem*, is set upon his Head for four Days together, to bring him in; and if he do not come in at the End of the fourth Day, then an *Attachment*,

ment, Fieri Facias, and Capias in manus nomine Distinctionis, issue against his Body, Lands, and Goods; and these issue to the *Marshal of the Court*, in order to bring him in: But what Goods are taken, or what Profits of Lands are seized, are forfeited to the King until he come in to account; and these issues are set until the Time he comes in to account; and do not go in Discharge of his Debt, but are Pains to make him Account, and must be compounded by the Sheriff: The Reason of this Proceeding is, because the Prefixion of a Day, is in Nature of a Summons for him then to appear; and when he is proclaimed upon a Pain, for *four* Days after, which are in Nature of *Days of Grace*, then he is presumed to have the King's Money in his Hands, and to have gone off with it; and therefore all the Process is to be made against him, as against an Accountant that has been summoned.

They give Security to answer their ^{Securities for} Proffers, and all other Profits of their ^{the Sheriff.} Sheriffwicks, before their Patents are made out, but they do not sue the Security, unless there is a Deficiency in the Sheriff's Effects. If the Sheriff keeps his Day of Prefixion, he is then to pay

Of the Sheriff's Proffers, and Appofal.

in his Proffers, and to be *apposed* before the Barons, on the Writs that issue from the King's and Treasurer's Remembrancers, to get in the King's Debts; and upon the Prefixion at *Michaelmas*, he is charged before the Curfitor Baron, on the Summons of the Pipe, for all the Farms that do belong to his County, and these were called *Vicontiel* Rents, or the *Corpus Comitatus*, or the *proficua Comitatus*; but the Clerk, to save the Expence of Time and Pains, instead of writing several little Rents in Charge, writ a Gros Sum *de Corpore Comitatus* 100 l. *et de numero Comitatus* 50 l. as is herein before mentioned; so that there was one Gros Sum charged upon him, and the Sheriff accounted for the *particular* Rents that made it up, by a Roll which he kept in his Custody; the Rents that were to be accounted *Blank*, were anciently reserved in fine Silver, and therefore they gave so much more *Numero* or by *Tail*; viz. in *Compto Bedf. et Bucks* 13 E. 3. "Nich' Pas-
" *selew de* 18 l. 4 s. 4 d. *numero, pro* 17 l.
" 7 s. *Blanc*"; *Hales* 29. And this Negligence in the Clerk, was the Occasion of the Loss of many Rents, to the Crown; but in *Norfolk*, where the Rents were greater,

greater, they writ the particular *Vicontiel* Rents in Charge, and so they remain upon the Pipe Roll to this Day.

The Sheriff pays in Proffers to the Value of the County Rents, because these he must *Tot* or *O'ni'* before the Curfitor Baron; if they are *not granted* out by the King he must *Tot* them, because he is bound to collect them, and these Rents he cannot *Nichil*, because the Lands might be seized into the King's Hands, and out of the Profits and Issues the Rents might be answered; and the Sheriff is looked upon as farming these Rents, and therefore is obliged to pay them in to the Crown; but he may *o'ni'* these Rents, for if the King grants any of them, he may show the Record in his Discharge; and all these Rents, being within the Survey of the Sheriff, he might acquit them *below* on Receipt of them, for the Sheriff, as Farmer of the County, was answerable for them.

The Sheriff must Tot or O'ni his Proffers, but cannot Nichil them.

The next General Head of Charge, were the *Proficua Comitatus*; and these were the Profits of the Sheriff's Court; and the Amerciaments of that Court were anciently farmed at a certain Rent, but after the Profit of the Green Wax so

The Profits of the Sheriff's Court

much increased, and the Fines and Amerciaments were generally in the King's Courts, this Article in the Sheriff's Accounts vanished, and was charged in the Article *de corpore Comitatus*.

The Nova
Oblata.

The next Head of Account was the *Nova Oblata*, and so is all the *Green Wax* of the Year, which he Tots with the foreign Apposer.

The Manner
of the Sheriff's
Discharge.

By O'ni.

As to the Sheriff's *Discharge* first he may *discharge* himself by an *O'ni*; (that is to say) by Order of Court, upon any particular Article, or by shewing the King's Great or Privy Seal, discharging it out of the Account.

By Tally.

The second way of *Discharge* is by *Tally*; which is paying in the Money in the Manner we have before mentioned.

Of the She-
riff's Tallies.

Tally of Prof-
fers.

Tally of Re-
wards.

And the Sheriff had two Sorts of *Tallies*: First the *Tally of Proffers*, which was for what he paid in as Farmer of the County; and secondly the *Tally of Reward*, which was anciently an Allowance of Charge to the Bailiff in what he had gathered; for the King's Bailiffs were to be allowed for their Expence and

The Allow-
ance of the
Sheriff's Re-
wards before

34 & 35 H. 8.

Trouble in their *Collections*: it seems, that before 34 & 35 H. 8. c. 16. the Treasurer did make out the *Tally of Reward* for the Sheriff's Charges in this Manner;

Manner; the *Receptor Talearum* examined the Bill of Charges brought by the Sheriff, and the Trouble he was at in attending at the Assizes and Sessions; and, after such Examination, it was brought before the *Treasurer*, and if the *Treasurer* allowed the same, he and the *Receptor Talearum* signed such Bill, which was a Warrant for the Tally to be struck for the Sum contained in the Bill; and by such Bill the Tally Cutter made the Tally, which seems to be pelled as other Tallies are, but not in the *Pellis Introitus*, but in the *Pellis Exitus*; and this Tally was delivered to the Sheriff, and he deducted it out of his Ballance: And this begun from the extraordinary Charge the Sheriff had, in treating the Judges and Justices at the Assizes and Sessions; for when the *Justices in Eyre*, who went from Place to Place, and lived privately, were turned into *Justices of Assize*, the Justices of Assize were treated by the Crown; for they could not go privately from Town to Town, as the *Justices in Eyre* did through their proper Circuits, who were received in Pomp at their entring into their Office only, and not afterwards; but the *Justices of Assize* were received with some State and Mag-

nificence at every Assizes; which creating an extraordinary Expence to the Sheriff, it became a Constitution of the Court of Exchequer, that the Sheriff should be allowed such Expence by the Treasurer, and that he should have Authority to strike a Tally, as for so much Money received by the King.

The Manner
of allowing
the Sheriff's
Reward after
34 & 35 H. 8.

After 2 & 3
E. 6.

But 34 & 35 H. 8. c. 16. took away all *Tallies of Reward*, but entitled the Accountant to bring in his *Disbursements* to the Treasurer; and to have an Allowance without such Tally. By 2 & 3 E. 6. c. 4. they may go by *Tally of Reward*, or by *Account*, before the Treasurer; and by that Statute, they have an Allowance, by a *Petition* to the Treasurer, and swearing the Contents of their Bill for Monies expended for the Judges of Assizes, Diet, &c. to be true; and the common Method, that the Treasurer has put it into, is, for the Judge of Assize to certify the Bill to be reasonable.

Of the Man-
ner of obtain-
ing and ma-
king out the
Sheriff's
Quietus.

If the Accounts equally ballance, the Clerk of the Pipe makes out the *Quietus*, which is in Nature of a Copy of the whole Record, both of the Charge and Discharge; the Reason why this was made up at the Pipe, was, because the Clerk of the Pipe was the Keeper of the

the King's Great Roll, which Roll was to shew how the Accomptants were charged and discharged; and therefore he had the Accomptant's Tally, and discharged him, and the Chamberlain kept the Counter Tally, to charge the Receipt it self.

If the Sheriff was in Debt to the Crown, he could not have a *Quietus* till he had paid the Ballance, for which he was obliged to strike a Tally: If the Crown was in Debt to the Sheriff, they recorded that *Surplusage* in this Manner; the Clerk of the Pipe, from the Record, made out the *Surplusage*, and from the *Constat* upon the Pipe, they obtained an Order of Court, that such *Surplusage* should be paid, by any other Accomptant that had Money in his Hands; and such Order was a Discharge to the Accounting Sheriff, for so much Money as he had paid to the other Sheriff, upon such Order. The Reason of this was, that when Money was paid into the Receipt of the Exchequer, it could never be delivered thence, but by the *King's Seal*, for that it became a Charge upon the Teller from which he had no Discharge, but by shewing the *Seal* of the Crown, since the Seal answered for so much to the Crown,

The antient
Manner of
allowing and
paying Sur-
plusage to the
Sheriffs.

Crown, and the Court of Exchequer had no Power over the Revenue, but whilst it was *in transitu*, and therefore the Record of *Surplusage*, could not fetch back the Money that was paid in by the Sheriff; but when any other Accomptant came that was deficient, they might order him to pay what was due to the former Accomptant; because there was a Record, of a Debt due from the King, in that Court, to the first Accomptant; and the paying off that Debt, would be a Voucher to the second Accomptant as for so much Money paid in, in the same Manner as if he had struck a Tally in the Tally Court; for the Payment in the Court above is the same as in the Court below; and therefore, if such Payment amounted to the Sum due from the second Sheriff, it intitled him to his *Quietus*; and by this Method they preserved the ancient Constitution, whereby the Privy Seals were always to be *Ex gratia* and not *Ex debito*.

The modern way of allowing and paying such *Surplusage*.

But now, this is altered, by the Third of King George, and a more Compendious Method is appointed: For now such Sheriff need not take out a Record of *Surplusage*, if any thing remains due to him from the Crown; but may apply to

to the Lord Treasurer, who will pay him such *Surplusage*, upon his producing a Certificate of such *Surplusage* from the Clerk of the Pipe or his Deputy.

When a Sheriff comes in at the *Utas* of *Michaelmas* to account, if he proceed and *tots* himself, and afterward departs, without paying in his Proffers, they Issue an *Attachment*, *Capias*, or *Distringas*; but in this Case, the Goods and Issues of his Lands taken and seized shall go towards Payment of his *Debet*; and being attached, he shall account in *Custod' Marreschal'*: The Reason of this is, because he is a Debtor upon Record, and therefore the Issues go toward paying the King's Debts; but if the Process were to bring him in, the Issues are forfeited, for not attending his Day of Prefixion, and do not go in discharge of the Debt, because he has no Debt upon Record: and this Forfeiture of Issues for Non-attendance, is according to the General Nature of the Feudal Customs, whereby the Bailiff, for not attending his Lord's Courts, forfeited the Profits of the Land which he held of him.

The Method of Proceeding against Sheriffs making Default in passing and discharging their Accounts.

By Attachment, &c.

There has been of late another way taken with backward Sheriffs, *viz.* by giving a Warrant to the Serjeant at Arms to

By Warrant to the Serjeant at Arms.

to take the Sheriff into Custody; and this hath obstructed the current of the Process of the Court; for it hath been delivered from the Lord Treasurer and Chancellor of Exchequer, that Process was to stay when the Serjeant was employed; that the Defaulter might not be punished twice for one and the same Fault. This Course began in the Time when Lord *Salisbury* was Treasurer, about 8 *Jac.* but before that Time, it is not found in all the Abstracts, to have been in that Kind used.

The Reason of this new Process was, because it was an oblique and round about way to seize the Lands and Goods of the Sheriff; and therefore, the Sheriff having departed in despite of the Court, and not finished his Account, he was sent for to account in Custody, that so there might be a compleat Ballance made and charged upon him.

When a Sheriff is said to be *cast out of Court*.

Whenever the Sheriff has finished his Account, he is said to be *cast out of Court*: This Manner of Speech began, when the Sheriff's Office was advantageous, and continued at the Pleasure of the King; for then it was an obloquy to him to quit the Office, and therefore he was said to be *cast out of Court*; which Expression afterwards

afterwards continued, when the Office became burthenfome and uneasy to the Sheriff.

Note : That if the Sheriff cannot gather any of the Crown Rents, that are given him in Charge, and which he ought to *Tot*, he must then apply by Petition to a Baron, and make Affidavit that he cannot find the Lands; and then he will have an *Exon' de Anno*. This arises out of the General Nature of Accounts with all Bailiffs; who, if they could not find their Lord's Rents, nor the Places given them in Charge, were to be exonerated; but it was still to be in Charge to the succeeding Sheriff, who might have better Success in finding those Lands.

In what case Sheriffs shall be discharged by *Exon' de Anno*.

C A P.

C H A P. XI.

Of the Revenues arising from the First Fruits and Tenths; and the several Matters heretofore under the Jurisdiction of the Courts of Augmentation and General Survey: With the History of the Rise and Progress of those Courts, till united to the Exchequer.

The antient Method of accounting for Matters charged on the Accountant's Roll in the Pipe.

THIS Manner, that we have mentioned, touching Sheriffs, was carried on to all Accomptants, who were charged on the Accomptant's Roll in the Pipe and discharged themselves by Tallies of Payment; for the Manner was, for Farmers, very often, to pay in their Rents to the Crown, and to take a Tally for their Discharge; and when that Tally was joined, and sent up to the Pipe, there was an *Exon*' entered in the Pipe, by the Payment of such Tally; and so
it

it was discharged out of the Sheriff's or Escheator's Account.

But upon the Dissolution of the Monasteries, by 27 H. 8. a vast Quantity of Lands came into the Crown, the Profits of which could not be collected in the old Manner; and thereupon the Court of *Augmentations* was erected, consisting of a Chancellor, Treasurer, Auditors, Attorney, and Solicitor, &c. and all Lands belonging to Monasteries and purchased Lands were within the Survey and Governance of this Court.

Erection of the Court of Augmentations.

This Court was erected by 27 H. 8. c. 27. and 33 H. 8. c. 39.

There was likewise a Court for the *First Fruits and Tenths* erected by 32 H. 8. c. 5. which consisted of a Chancellor, Treasurer, King's Attorney, two Auditors, and two Clerks; and they had Authority to compound for the First Fruits, and to take Bond for the same, and the Bonds taken in either of these Courts, or in the Exchequer, were to be in the Nature of Statute Staple.

Erection of the Court of First Fruits and Tenths.

These Courts set up a new Manner of accounting, for they first took a Survey of all the several Lands, belonging to the Monasteries, and that came to the King by Dissolution; then they appointed the

The Method of accounting in those Courts.

Tenants of those Lands to account before the Auditor, and the Auditor made out to every Man his *Debet*; and they appointed for every County a Receiver General.

The Receiver General gathered the Rents of the Tenants according to their *Debet*, and his Discharge was an Acquittance to the Tenant from such *Debet*; for the Receiver was charged with these *Debets*, and if the Tenant did not pay such *Debet*, the Receiver returned him *Insuper*; and then the Court made out Procefs against such Tenant, and the Receiver was an Accomptant before the Chancellor and Auditor for the several Sums that he received upon such *Debets*.

The Manner of the General Receivers accounting in the Courts of Augmentation and General Survey.

Upon the Dissolution of the Monasteries the Courts of *Augmentations of the Revenue and General Survey*, were erected; and eleven Offices of Receivership were appointed in the Realm, who had their particular Counties in their Commission; and they were to finish their Accounts annually before the End of *Hillary Term*; and pay in the last Money of their Debt, determined by the Auditor, before the 20th of *March* then next ensuing, upon Pain of Forfeiture of their

their Offices, and of such Bonds in which they were bound for the same: This Constitution is mentioned in *Dyer* 211. where Sir *Robert Chester*, who was Receiver of *Essex*, *Hertford* and *London*, was cast in Arrear before the Auditor, and did not pay the Debt before the 20th of *March* according to the Ordinance; there it was resolved, that his Place was not forfeited, without a *Scire facias*, because he was an Officer of Record: But afterwards in *Dyer* 216. it was resolved, that this Office was extinct and void by the Dissolution of the Court.

The Stat. 1 *Ph.* and *Ma.* c. 10. gave the Crown Authority to dissolve the Court of *Augmentations*, and unite it to the Court of *Exchequer*; and Queen *Mary* by a Patent dated 23 *January* in that Year, dissolved the Court; and by a Patent, dated the next Day, united it to the Court of *Exchequer*; which the Judges resolved to be absurd and impossible, because they could not unite any thing to the Court of *Exchequer* which was dissolved and a meer Non-entity.

By the 1 *Eliz.* c. 4. the First Fruits and Tenths, that had been given up in the Time of Queen *Mary*, (2 & 3 *P.* & *M.* c. 4.) were again restored to the Crown, and uniting it to the *Exchequer*.

The Method of accounting in the Courts of Augmentations and First Fruits, adopted by the Exchequer in Matters under the Survey of those Courts.

Crown, and by the union of that Court, and the Court of *Augmentations* to the Court of *Exchequer*, they proceeded in the same summary way touching the Matters that had been formerly under the Survey of those Courts: And therefore, in the Case of Sir Henry Neville and Sir Thomas Wroth, in *Plow. Com.* 377, 452. the Court gave Judgment, that Letters Patent, whereby the Receivers Salaries of the Court of *Augmentations* were appointed, should be paid out of the *Exchequer*, and my Lord Sommers, in his Argument of the Bankers Case, observes, that this was a Proceeding in the Court of *Exchequer*, in the same Manner as they were wont to do in the Court of *Augmentations*; where, upon the Enrollment of the Patent, they make out the Orders for their Salaries: And he is of Opinion, that the uniting of the Court of *Augmentations* to the Court of *Exchequer* was not absurd, or an impracticable thing; for indeed they have accounted for these Lands before the Auditor and Chancellor, after that Union, in the same Manner as they had done before in the Court of *Augmentations*; and in that Court, the Auditors were wont to keep an Audit in every County,

County, for the Tenants of that County, where they used to settle their *Debts*, and there they were paid in to the Receiver General of such County; and where there are any of these Lands remaining, the Auditors, by their Deputies, keep an Audit to this Day.

P. A. C. M 2

C A P. XII.

Of the Proceſs for Recovery of Debts due to the King on Bond; and on Extents in aid of the King's Debtor.

The Nature of the Summons of the Pipe, and the Schedule of the Pipe.

Duty of the Remembrancers.

THE Summons of the Pipe was in Nature of giving out to every Sheriff, a Roll by which he was to gather the King's Revenue, and account for the ſame: And this Revenue was of two Sorts, firſt the *certain Revenue* or the Rents and Profits of the Crown; and ſecondly the *Fines and Amerciaments*: And the Fines and Amerciaments, being always ſet *Salvo Contenemento*, and not afterwards traſverſable, they were given out by the Summons of the Pipe as *ſperate* Debts, which might be gathered; but if any of them did not come in by the Summons of the Pipe, then they were iſſued by the *Schedula Pipæ* to the *Treſurer's Remembrancer*, that they might be put into ſtronger Proceſs. So that the *Treſurer's Remembrancer* iſſued the Proceſs for all the

the *determined* Revenue, both Land Revenue and Pecuniary, if it were adjusted and ascertained; for the Remembrancers were the Issuers of Procefs; and the *Treasurer's* Remembrancer issued the Procefs for the *certain* Treasure of the Crown; and therefore his Manner of issuing Procefs was always to inform the Summons of the Pipe, wherein both the Land and Pecuniary Revenues of the Crown were transcribed, in order to be got in; but any Part of the Revenue that was *in fieri* in the Exchequer, such as Informations upon Penal Statutes, or Seizures for Non-payment of Customs, was within the Survey of the *King's* Remembrancer; and by Consequence all *Bonds* given to the Crown were returned into this Office. Before the Time of *H. 8.* there were very few *Bonds* given to the Crown, but *Recognizances* might be taken to the Crown, for they were Matters of Record, and the King could not take any Debt but by Matter of Record; but it seems to have been the Method before the Time of *H. 8.* whenever they gave bond to the Crown, to give a Warrant of Attorney to confess a Judgment; and then, though the King could not take by the Bond which was no Matter

Procefs for the certain Revenue issued by the Treasurer's Remembrancer.

Procefs for the Revenue *in fieri* issued by the King's Remembrancer.

The ancient Manner of giving Bonds to the Crown.

Bonds to the
Crown have
the Force of
Statute Staple
by 33 H. 8.
see before
pa. 125, 126.

In what Cases
a Scire fac.
or a Levari fac.
shall issue on
Debts by Bond
or Recogni-
zance to the
Crown.

Difference in
the Proceed-
ings on Bonds
to the King
and those to
private Per-
sons.

of Record, yet he could take by the Judgment confessed unto him: But by 33 H. 8. c. 39. a Bond given to the King was made in the Nature of a Statute Staple, and by Consequence they might sue out a Writ of *Levari* upon it, at any Time within the Year after the Bond was given: If it be doubtful whether the Bond or Recognizance be forfeited, then a *Scire facias* issues to call in the Party: So, after a Year and a Day, if there be any Prosecution upon such Bonds, it seems, a *Scire facias* shall issue; but it seems they may have quicker Process, by a *Levari*, upon Affidavit made before a Baron, that the King's Debt is in Danger.

The Reason is, because it must be presumed that such Debt is not paid; for though, in the Case of a common Person, the Debt upon a *Statute Staple* is presumed to be payed, after a Year and Day and no Execution taken out; yet that is not so in the Case of the King; because, if it were paid, it would appear upon Record, and when the Debtor had got his Tally, it is presumed he would move for an Exoneration of his Bond; and by consequence in this Case, "*Nulum tempus occurrit regi*," and therefore

fore he is not bound to the Year, as to the issuing his *Levari*.

The King had a Prerogative in relation to his own Debtors, that he could take from them an *Assignment* of any of their Debts; this was not allowed in the Case of common Persons; because it would have promoted Maintenance, if great Lords could have taken Assignments of Debts from their Tenants; for poor People were not able to withstand the Force of great Men, and therefore, by the general Law of the Realm, no Debts were to be assigned: But the King was not within this Law, because it was not to be presumed that the King would maintain an unjust Suit; and therefore the Law touching Maintenance did not reach to the Crown. This also begot the Notion, that Debts might be extended *in Aid* of the King's Debtor; for if they might be assigned to the King, the King might extend them, as Part of his Personal Estate; but for Debts assigned to the King, or found by Inquisition, and seized into the King's Hands at the Prosecution, and for the *Aid*, of any Accomptant or Debtor to the King, the better to enable him to satisfy his Debt to the King, (for that it is rather

The King by his Prerogative may take an Assignment of a Chose in Action, but not a private Person.

The Reason for this Difference.

Origin of Ex-tents in Aid of the King's Debtor.

for the Benefit of the Party Accomptant or Debtor, than of the King,) a moderate Course is held, (*viz.*)

The Course of Proceeding on Debts assigned to the King, or found in Aid, by Scire facias, or by immediate Extent.

After any Debt so *assigned*, or found by Inquisition, Process of *Scire facias* is to be awarded against the Debtor, into the County where he dwelleth; except, upon special Reason, the Court doth give Warrant for a present Extent, and that is usually against his Goods and Lands, with a Provifo, that no Goods be sold by the Sheriff, until he hath further Process.

The Reason of this Course of Proceeding.

The Reason of this is given in the Rule, because the Process is in ease of the King's Debtor; and therefore, unless the King's Debt be in danger of being lost from the original Debtor, and likewise be in danger of being lost by the second Debtor, they never give way to an immediate Execution; but give the Debtor of the King's Debtor leave to contest it on a *Scire facias*; because where all things were safe, it was but a more immediate Process to make him appear.

The Proceedings after Scire feci returned.

After *Scire feci*, or two *Nichils*, returned, a Rule is to be entered upon the Writ for four Days at least; and if the Defendant do not by that Time appear,

pear, then Judgment may be entered, and Process of Extent made forth against him; or Process of Extent may be made, although no Judgment be entered upon Record; which is most usual, because it is prejudicial to the Debtor to enter the Judgment; since, if no Judgment be entered, he may plead to the Debt, and as it is as beneficial to the King to have Extent upon Bond or Recognizance as upon Judgment, if the Defendant do appear, but do not plead by the Day given upon the Writ, then the Plaintiff's Attorney, in the Presence of the Defendant's Attorney, must give a further Rule of four Days more.

The two *Nichils* are the same thing as the *Scire feci*, and therefore for want of Appearance in four Days, which is the *Quarto die post*, then, according to the Rule, the Judgment may be entered; for this Judgment is founded upon the preceding Record, as it is in Cases of all *Scire facias*'s; for where there is Matter of Record against any Person, and a *Scire facias* issues to defend himself against that Record, is to make the Defendant Party thereunto; if the Party do not come in where the Sheriff returns a *Scire feci* upon him, there is no farther Process, but they proceed to Judgment; and

After two
Nichils re-
turned.

and two *Nichils* are presumptive Notice, and equal to a *Scire feci*; but this Rule is an Indulgence in the Court of *Exchequer*, that they do not enter Judgment; for if the Judgment were entered, then the Court would be concluded, though perhaps the Defendant had no Notice of the Debt.

The Procefs
on an Extent
returned
where Goods
are seized.

If the Goods be seized, and the Extent returned, a Rule of six Days is to be given upon the Writ; and if the Defendant do not appear by that Time, then a Writ of *Venditioni exponas* may be made to sell the Goods: If the Defendant do appear and plead, then a further Rule of four Days is to be given as aforesaid. If Lands be seized, Procefs of *Levari facias* may be made, to levy the Mesne Rates half-yearly, or oftner if it be required, until the Principal Debt with Costs and Damages, as the Court shall think fit, be satisfied.

The Procefs
on Extents
returned
where Lands
are seized.

The Reason
of the fore-
going Pro-
ceedings.

The Reason of these Rules are, that upon such Debt, the Extent goes out to extend both the Land and Goods of the King's Debtor; if the Goods be extended, the six Days Rule is given, because the Party on the *Scire facias* may have no Notice; but he cannot but have Notice when his Lands and Goods are taken:

taken: And therefore six Days are given to plead before they sell the Goods, and if he comes in then, and has good Matter to plead, the Court will give him Leave; but if they extend the Lands, then the Value of the Lands is found upon such Extent, and a *Levari* issues to the Sheriff immediately at the Return of the Extent, for the Party may come in and plead at the Return of the Extent, before any Profits be actually levied.

When the *Levari* goes out, the Remembrancers Office writes the Lands in Charge to the Pipe; and from thence forward those Lands are in Charge on the Summons of the Pipe, and the Sheriff returns the Issues and Profits of those Lands annually, until the Outlawry is reversed. So that it seems, that upon the first Issues, they answer to the *Levari* before the Baron, and those Issues are drawn out into the Pipe, in order to Charge the Sheriff; that the next Year, the Summons of the Pipe may go out for the same Issues, because the Lands are then within the compleat Charge of the Sheriff.

The Manner
of charging
the Sheriff
with the Pro-
fits of Land
extended.

If any will plead in Discharge of the *Extent*, or of the Debts, he must traverse

The Manner
of traversing
of offices found
upon Extent.

upon

upon a particular Roll, the whole Matter of Charge to which he pleadeth; and upon Plea put in, the Party who prosecutes for the King, must procure the King's Attorney to reply or demur, as the Case requireth, and so to proceed to Tryal or Judgment: This traversing of Offices found upon Extent, seems to come in by 34 E. 3. c. 14. and 36 E. 3. c. 13. and my Lord Sommers is of Opinion, that before those Statutes, they could not be admitted to traverse, where the King's Title was found by the Office *fo. 94, 95.*

At Common Law no Traverse on Office found on Extent.

But at Common Law, if the Subjects Right was found by the Office, he might pray an *Amoveas manus*; but where no Title was found for the Subject, at Common Law, he could not traverse, but was put to his Petition: The Reason was, because the King takes by Matters of Record, and a Record was not traversable in its own Nature; and if the Subject was aggrieved, he could not have a Writ of Right, because the King cannot be supposed to do wrong, or to disfeize or deforce any Person; and therefore, in such Cases, there was a Petition of Right to the King himself, shewing the Subjects Title, and praying that the

the King's Hands might be removed, to which the King answers, (*Soit droit fait aux parties*;) and so the Petition is entered of Record in Chancery, and the Attorney General interpleads, and shews the Right of the King.

If the Defendant plead to the *Scire facias*, Process is to stay till the Plea be determined; but if Goods or Lands be extended, Process is not to stay without Special Order of Court, upon bringing into Court, the Goods or the Value thereof, or the Mesne Rents of the Lands, or Security put in to abide the Order of Court; and the Reason is, because when a Man pleads in Discharge of the *Scire facias*, he pleads in Discharge of the Debt; and therefore the Debt is in suspense till the Plea is determined, but where the Goods and Lands are extended, and he comes in to plead, it is to discharge an Execution executed; and therefore nothing is to be stayed, till he has given Security to answer the Goods, or the mesne Profits of the Lands.

An Order of the Court of Exchequer touching assigned Debts.

Hil. 15 Car.
12 Feb.

“Whereas, upon Complaint made of

“Abuses formerly happening touching
“assigning

Co. Ent. 419.
4 Co. 54.
Sadler's
Case.

In what Cases
Process shall,
or shall not be
stayed on
pleading to
the *Scire
facias*.

Hil. 15 Car.
12 Feb.

Regula.

“ assigning of Debts to his Majesty, and
“ in causing of Debts to be found by
“ Inquisition, upon Bond taken in his
“ Majesty’s Name, for the Payment of
“ Money to some of the King’s Farmers,
“ Receivers, and other Accomptants;
“ the Lord Treasurer, Lord *Cottington*,
“ Lord Chief Baron, and the rest of the
“ Barons of this Court, and Sir *John*
“ *Banks*, Knt. his Majesty’s Attorney
“ General, having conferred together,
“ and taken mature Consideration for
“ reforming the said Abuses, have
“ thought fit, and *do order* in the fu-
“ ture, that no Debts be assigned to the
“ King, nor found by Inquisition for
“ the King’s Debtors or Accomptants
“ *in Aid*, save such as are originally
“ due unto them *bonâ fide* without any
“ Manner of Trust, according to the
“ Directions and Instructions hereafter
“ following, (*viz.*)” “ He who assigneth
“ any Debt to the King shall take this
“ Oath, *viz.* The within named *A. B.*
“ maketh Oath, the Day of the Date
“ within written, that the Debts hereby
“ assigned are just and true Debts, and
“ have not formerly been put in Suit in
“ any other Court; and that the same
“ are his own proper Debts, originally
“ due

“ due unto him, *bonâ fide*, without any
“ Trust, and that he hath not received
“ the same, nor any Part thereof, ex-
“ cept, &c.” He who desireth any Debt
“ or Debts to be found by Inquisition in
“ his *Aid*, shall take the following Oath,
“ viz. The said *B.* maketh Oath, the
“ Day and Year above written, that he
“ is justly indebted unto *A.* one of the
“ Farmers of his Majesty’s Customs,
“ and that the same is a just and due
“ Debt, originally due unto the said *A.*
“ *bonâ fide*, without any Manner of
“ Trust; and that the said Debt hath
“ not been put in Suit in any other
“ Court; and that he hath not received
“ the same, nor any Part thereof, ex-
“ cept so much, &c. and that *C.* is
“ justly indebted unto him the said *B.*
“ originally, and *bonâ fide*, without
“ Trust, and that *C.* is much decayed
“ in his Estate, so that unless a speedy
“ Course be taken against the said *C.* the
“ said Debt by him owing is in danger
“ to be lost. That no further Process
“ shall be taken for Debts in *Aid*, than
“ to inquire and seize the Lands, Debts,
“ and Personal Estate of him that is
“ Debtor to the King’s Debtor or Ac-
“ comptant, unless it be by *special Or-*
“ der made in *open Court*.”

The

Reason for
these Rules.

The Reason of these Rules was, because they made a State of the Process; for many Persons in Debt assigned their own Debts to the King, in order to get immediate Extents against their Debtors; and therefore the Court took Care, they should swear them to be just Debts, and likewise that they should proceed no farther than an Enquiry and Seizure, and not to sell Goods, without *special* Order of the Court. Indeed it seems, that upon Debts *in Aid* they should not suffer any Process to go against the Debtor of the King's Debtor without a *Scire facias*, unless there be an immediate Danger that the King should lose his Debt, and that be made out, either to the Court, or before a Baron.

Rule.

“ No Debts without Specialty shall be
“ *assigned* to the King; otherwise in case
“ of Debts *in Aid*.”

“ No Debts without Specialty shall be
“ found by Inquisition for Debts *in Aid*,
“ unless it be by Order, upon Motion
“ in open Court, and except it be for
“ Debts due to the King's Farmers.”

“ That no immediate Process of Ex-
“ tent be awarded for Debts *in Aid*, but
“ in Cases of Extremity, and upon
“ Oath to be taken, as aforesaid.”

The

The Reason is, because no Debts can appear to the Court to be due to the King's Debtor without a Specialty; and the Prerogative of the King should not be abused, by the Assignment of Simple Contract Debts, before they be tried; but where such Debts are found to be upon *Extents in Aid*, there they are recorded upon the Oath of the Jury; but the Court will not let such *Extent in Aid* issue, before they are satisfied that they are just Debts, and necessary to be got in by the King's Debtor.

Reasons for
the last three
Rules.

The *Scire facias* on such *Extents in Aid* sets forth the original Debt, and then sets forth the Inquisition taken of the Debt due to the King's Debtor, by Virtue of such *Extent in Aid*; and they may likewise have Extents against the Debtor of such Debtor, and so on as far as any Effects can be found. There are Instances of this in *Tremayne's Ent.* 572 to 616; and the Reason why they can go from Debtor to Debtor, as far as Effects can be discovered, is this; because the second Debtor, when the Debt is seized, is a Debtor to the King, since the King, for the Reasons aforesaid, can seize a *Chose in Action*; and the second Debtor, being become a

Form of the
Sci. fa. on
Extents in
Aid, and how
far such Ex-
tents can go.

N

Debtor

Debtor to the King, he likewise can have an Extent, to seize the *Chose in Action* that is due to him.

The King's
Right extends
to Debts due
to his Debtors.

For in Relation to the King, not only the Money that the Debtor has in his actual Possession, but that which he has out in other Persons Hands, shall belong to the King. For common Persons, if their Debtors made away with their Effects, were supposed to be able to look after them, and to watch the Goods in the actual Possession of them: But the King, being engaged in publick Affairs, could not watch an actual Possession of his Debtors; and therefore, since there was no danger of Maintenance, he might proceed to get in their *Debts* as far as he could discover them.

Rule.

“ That every *Scire facias* for such
“ Debts, shall be awarded into the pro-
“ per County, where such Debtor is
“ mentioned in the Specialty to reside,
“ unless upon a *Scire facias* returned in
“ *London and Middlesex.*”

The Reason of this Rule was, that no Body might be surprized by getting two *Nichils* in a Foreign County; and so to get Judgment for the Debt in a secret way, without having it disputed.

I

“ That

“ That where Bonds are taken in the Rule.
 “ King’s Name, payable to the King’s
 “ Majesty’s Farmers, Receivers, &c.
 “ they shall, before any *Extents* go
 “ forth, make Oath, or testify it under
 “ their Hands to the Court, that such
 “ Bonds are, and at the Time of taking
 “ such Bonds were, for just and true
 “ Debts, originally owing to themselves,
 “ *bonâ fide*, and that they are not in
 “ Trust, or for the Benefit of any
 “ other.”

“ That Receivers, Collectors, and Rule.
 “ Bailiffs, have no more *Deputies* than
 “ are necessary for the King’s Service,
 “ and that such *Deputies* be neither
 “ *Tradesmen* nor *Scriveners*.”

The Reason of this was, because they
 would not intrust such Persons as were
 liable to become *Bankrupts*.

C A P. XIII.

Of the Proceſs for ſeizing Goods forfeited to the Crown for Non-payment of Customs, and on Penal Statutes: With the Nature of Proſecutions in rem.

Of the Seizure of Goods for Non-payment of Customs, &c.

IF there be a *Seizure* at any of the Ports, for Non-payment of Customs and the like; ſuch Seizures of Goods, are grounded upon Acts of Parliament that have made it a Forfeiture.

The Origin of Proſecutions in rem.

Of the Seizure and Condemnation of Wrecks, Waifs, and Strays.

And to underſtand this *Proſecution in rem*, we muſt conſider; that when there was no Property in Lands or Goods, they belonged to the Crown; and hence, if a Man died without Heir, and there was no Tenure of ſuch Lands from any particular Lord, the Eſcheator ſeized it for the Crown; ſo all Wrecks and Waifs, and Strays, were ſeized by the Sheriff for the Crown: And in theſe Caſes, on ſuch Seizure they uſed to make *Proclamation*, and if upon the ſecond *Proclamation*, no Body came in to claim the Lands

Lands or Goods, they were presumed to be *Derelict*; so that upon every Seizure, they were wont to file Informations in the Courts of Record, and then to make the first *Proclamation*, in order to condemn the said Lands or Goods to the King's Use. And then there issued a *Commission of Appraisement*, in order that the same might be valued, and that the Sheriff might answer the Value thereof to the King's Use: And upon the Return of the Commission of Appraisement, there was a *second Proclamation* made; and then, if no Body put in their Claim, it was presumed to be *Derelict* and forfeited to the Crown: But in the Case of *Strays*, there was an Abuse, by Sheriffs taking up Horses and Sheep, and getting them appraised and proclaimed, and forfeited to the Crown as *Derelict*, and therefore a *Year and Day* was given, for the Owner to claim before such Presumption took Place.

When they constructed Penal Laws by way of forfeiture, the *Forfeiture* was appointed *in rem*, and likewise a Penalty was laid upon the Person transgressing the Law; and hence it was, that upon Seizures such Goods were often *De-*

The Proceedings on Seizures by Officers of the Customs.

Two Proclamations to be made.

relict, because the Owners would not come in to claim them, lest they should be subject to a Personal Information; and therefore the two Proclamations were entered, and upon the first Proclamation a Writ of *Appraisement* went out, that the Officer or Person that seized might be answerable for the King's Part, and the Claim was always entered upon the second Proclamation.

The Cause of Seizure to be returned, and Writ of Appraisement to be issued.

If there be a Seizure made, the Officer must in the next Term, or sooner, at the Discretion of the Court, return the Cause of Seizure, and take out a Writ of *Appraisement*, otherwise the Proprietor is intitled to move for a Writ of *Delivery*, upon which a Writ of *Appraisement* goes of course, and upon that Writ of *Delivery* he has the goods delivered to him, giving Security in double the Sum to answer the Value they are appraised at.

Writ of Delivery.

At what Time the Writ of Appraisement shall be returnable.

If the Goods are seized by the Officer in either of the two long Vacations, to wit, *Hillary* and *Trinity* Vacation, then the Officer is obliged to take out the Writ of *Appraisement*, returnable with the Cause of Seizure the first Day of the Term, if the Port be 100 Miles from
London

London and the Seizure be made 14 Days before the Term, or 60 Miles from *London* and the Seizure made 10 Days, or in the Port of *London* and the Seizure made six Days before that Term; otherwise the Proprietor may move for a Writ of *Delivery*: And this Rule is made to expedite the Proprietors at the Time when the Judges are in their Circuits, when they cannot move the Court that the Officer may return Cause of Seizure.

If the Officer take out a Writ of *Appraisalment* within proper Time, the Proprietor is to put in his Claim, if in Town within eight Days, if in the Country 14 Days, after the Return of such Writ; if, after Claim put in, an Information be not filed in a Month, then the Proprietor may move for a Writ of *Delivery*, which he may have upon giving Security.

How the Proprietor of Goods seized may obtain a Writ of Delivery;

If there be no Cause of Seizure returned, nor Writ of *Appraisalment* taken out, for the Proprietor to intitle himself to full Costs upon the Writ of *Delivery*, he must first make a Demand of the Goods at the Custom-house; and this is, because all Goods are lodged at the Custom-house when ships are cleared,

and intitle himself to Costs.

and therefore if there be neither Process on them, nor Demand and Refusal, it does not appear that they are detained from him, and therefore he cannot be intitled to his full Costs.

**In what Cases
several Sei-
zures may be
in one Writ of
Appraisement.**

If the Seizures be of a small Value, the Officers, to save Expence, may put several of those Seizures into one Writ of *Appraisement*, so that they do not in the whole exceed the Value of 100*l*: or if, upon Affidavits by the Officers or some of them, it should appear that such Seizure or Seizures were jointly made by them, and for their joint and mutual Benefit, at one and the same Time, then they may join in one Writ of *Appraisement*, notwithstanding the same should exceed the Sum of 100*l*.

**Notice and
Countermand
of Trial when
to be given.**

It is the Rule that *Notice of all Trials* be entered in a Publick Book to be kept for that Purpose; and that Notice of all Trials, above 60 Miles from *London*, in *Easter* and *Michaelmas* Terms, be 14 Days before such Trial; and in all Causes within 60 Miles of *London*, be ten Days at least before such Trials; and that Notice of all Trials, in *Trinity* and *Hillary* Terms, above 60 Miles from *London* be 10 Days at least, and within 60 Miles of *London* eight Days at least, before

before the Day of Trial; except on Seizures in the Port of *London*, and Issues arising in *London* and *Middlesex*, the Trials on which Seizures are to be on six Days Notice: And that all *Countermands of Trials*, be entered in the same Book, two Days at least before the Day of Trial, unless in Country Causes, and then four Days before Trial; and if the said Countermand be entered in the Book two Days or four Days as aforesaid before Trial, the Defendant in such Case, without special Order, is not to be entitled to Costs.

This is according to the common Rule of Notice of Trial, which in all Country Causes must be fourteen Days before Trial, that each Side may prepare and get their Witnesses ready; and therefore, in the two long Terms of *Easter* and *Michaelmas*, there are full 14 Days if it be above 60 Miles from *London*, because they have Time within those Terms to give such Notice; but if it be within 60 Miles of *London*, then 10 Days Notice will be sufficient Time for Preparations; and in the short Terms, 10 Days Notice is sufficient if above 60 Miles, and eight Days if less than 60 Miles from *London*.

The Time of Notice of Trial in this Case, conformable to the common Rule.

As

If not tried according to the Notice the Claimer may have a Writ of Delivery.

As soon as Issue is joined, Notice must be given of Trial, and it must be tried according to that Notice; if not, the Claimer may move for a Writ of *Delivery*, which will be granted upon giving Security as before; for the Claimer cannot force the King to try it by Proviso; but if the King do not try it, it is not reasonable that the Goods should be detained from the Owner.

If no Laches in the Crown, the Claimer must detain his Witnesses at his Peril till Trial.

If there be no *Laches* in the Proceedings of the Crown, the Owner ought to detain his Witnesses at his Peril, for the very seizing of the Goods is Notice to the Claimer, and an Undertaking to proceed to Condemnation according to the Rules of the Court.

But not, if there be Laches on the Part of the Crown.

But if there be any *Laches* in the Proceedings to condemn, then upon an Affidavit, that the Claimer has a material Witness, and that he has done his Endeavour to keep him, the Court will not put off the Trial; because if there be any *Laches* in the Condemnation, the Claimer must not be indefinitely obliged to procure his Witnesses to stay.

In what Cases and how a License to compound may be granted, and how the Composition shall be made.

When a Suit was commenced, even between Party and Party, they could not compound the same without Leave of the Court, which was the original of all Fines

Fines concerning Lands and Tenements; and the Reason was, because the King had an Interest in every Suit in his Court, since there was an Amerciament in the Judgment; much more in Informations, where the King himself was Party, the King had such an Interest, that the Informer could not compound without Leave of the Court; but yet in many Cases, where Penalties were great and the Offenders poor, it would have been exceedingly hard if the Law had been inexorable, and the Informer might not have compounded with the Offender; and it would have still been more derogatory to the Honour of the Crown, if the Informer had compounded and there had been no Method found out to have made a Composition for the Crown; from hence it is that there is a standing Privy Seal by which, the Commissioners of the Treasury, High Treasurer, Chancellor, Under Treasurer, Chief Baron, Barons of the Coif, and Attorney General, or any one of them, are impowered to give a *License to compound*; provided no Fine be set less than half so much as the Informer shall or is to have for his Part; in order to see that the King's Part be at least equal to one Half of

of the Informers, there must be an Affidavit made by the Informer of what he receives upon such Composition; and then they go back to the Officer, and the Composition is set, and then it is carried to be signed by the Commissioners of the Treasury, Lord High Treasurer, Chief Baron, Attorney General, or any two of them, who by the said Privy Seal are entitled to compound the same.

Abuses of the Power to compound remedied.

This Power was abused by Offenders against Penal Statutes; for after such Transgressions, they used to set up sham Informers, in order to get rid of the Penalty; and so compound with them for a little, and diminish the King's Part almost to nothing: For this Cause it was, that by the Rules of the Court, the Christian and Surnames with the Addition of the Parties are to be put into the *License*, together with the Place of their Abode, the *License* is to be signed by a sworn Clerk, and entered into a Book, before the same is signed by a Baron; when a *License* is taken out, it is to be in Force no longer than as follows, (*viz.*)

How long the License to compound shall continue in Force.

If taken out in *Hillary* Term, or within three Weeks after, then not to endure longer than to the first Day of *Easter* Term then next following; if taken

taken out after the said three Weeks after *Hillary* Term, then not to endure longer than the last Day of *Easter* Term next; and if taken out in the first Week of *Easter* Term, then not to endure longer than the first Day of the next *Trinity* Term; and if taken out after the first Week in *Easter* Term, or in the Vacation following, then not to endure longer than to the last Day of that *Trinity* Term; and if taken out within *Trinity* Term, or within one Month after *Trinity* Term, then not to endure longer than to the first Day of next *Michaelmas* Term; and if taken out after the said one Month after *Trinity* Term, then not to endure longer than to the last Day of *Michaelmas* Term; and if taken out after the first Week in *Michaelmas* Term, or in the Vacation following, then not to endure longer than to the first Day of *Hillary* Term following.

When the Composition is made, the Informer comes before a Baron, and makes Oath of the Sum he has received, and brings along with him the Defendant, his Solicitor, or Agent; and this is, that the Judge may examine likewise, whether the Composition be real; and in fifteen Days after the Composition must be

How Compo-
sitions shall be
recorded, the
Fine rated,
and paid, and
a Writ of De-
livery obtain-
ed thereon.

be recorded in the Book, the Defendant is obliged to get the Fine rated, and paid in in twenty Days next after the Informer has sworn to the Composition; otherwise Process *ad faciend' finem*, and all other Process, will be issued against him: When the Fine is set there is a *Debet* made out of the Remembrancer's Office, for which the Defendant is an Accountant, and he must pay in the Money, and strike a Tally within the said twenty Days; which if he performs Judgment is entered at the Office, and, upon a Real Information, he shall have a *Writ of Delivery*.

How the Writ
of Delivery
shall issue
where the
Fine is paid,
and how
where Security
is given.

When any Person has a Writ of Delivery, upon *Composition* or *bidding*, he must produce the Tally to the Baron, at the signing the said Writ, in order that the Baron may see that the Price, upon which the Goods are delivered, is paid; but where the Writ of Delivery is granted upon *Security*, there it is made out upon the Order of Court, without being signed by a Baron; because the private Order of a Baron cannot Warrant the Delivery of the Goods, unless grounded upon a Tally of the King's Part being paid; for the Property of the Subject, in both Cases, must be made out from the Acts of the Court.

By

By 33 H. 8. c. 39. the Court of *Exchequer* have Power to *discharge* all Debts and Duties due to the King upon any *Equity disclosed*; and it is, by Virtue of this Act, that they discharge Recognizances; and it seems, that by the same Act, they may discharge Penal Laws made *before* this Statute, but no Penal Law made *after* the Statute can be discharged, but must be compounded.

Of the Power of the Court to discharge Debts on Equity disclosed.

Whenever they move for a *Discharge*, they must bring a *Constat* of the Fine or Recognizance, upon which the Motion must be grounded; because the Motion is in Nature of an Account, and then a Man must charge himself before he can be discharged; and the ancient Way was to make a Memorandum of the Debt, and likewise of the Order of Discharge, upon a Roll by it self; which Practice, by Negligence of the Clerks, has been discontinued.

How a Discharge shall be obtained.

C A P.

C A P. XIV.

*Of the Revenue of the Land-tax:
With the former Manner of
Taxation by Escuage, Fifteenths,
and Subsidies.*

Of the antient
Manner of
Taxation by
Escuage and
Tallage, and
the Inconve-
niencies at-
tending it.

AS the Escuage was on Lands held by Knights Service, so the Tallage was on the Cities and Boroughs, and it was made in this Manner.

When the King wanted Money for his Wars, those Tenants, that did not attend him in Person, paid him an Aid, and the Aid was assessed before the Justices Itinerant. It was generally a Gift of all the Inhabitants as a Body Corporate; if they did not give according to the Wants of the Crown, the Justiciar enquired into their Behaviour, and if there were any Forfeitures of their Charters, *Quo Warranto's* came out, to seize their Liberties into the King's Hands.

Those Incon-
veniencies re-
medied by the
Invention of
Edward the
First.

But *Ed. 1.* found this Way of taxing by Escuage and Tallage to be very incom-
pleat; because Wars were drawn out into
great Length and Expence; and there-
fore

fore he formed into distinct Bodies, the Tenants *in Capite* that held great Baronies, and these were called the *Barones Majores*, (the now *Peers of Parliament*); and the *Representatives* of the *Barones Minores* and of the several *Corporations*, (*viz.*) the *Citizens* and *Burgesses*, of whom he made one Body which now composes the *House of Commons*.

King *Edward* the First granted the People *Magna Charta*, which they had long contended for, and also the *Charter of the Forests*; and for *Magna Charta* they granted the King a Fifteenth, by the Name of *Quindecimam partem omnium bonorum*; so that instead of particular Assessments in Cities and Boroughs, there was one Universal Assessment of the *Fifteenth* of all their Substance: This Fifteenth seems to have been at first made out of the Ecclesiastical Tenth; for the Popes claimed the Tenths of all Benefices, it was therefore easy to know by the Pope's Collections of his Tenths, what was the Value of every Ecclesiastical Benefice, for the Pope's Tenth was reckoned at 2 s. *per* Pound, and therefore the Fifteenth must be 1 s. 4 d.: The Benefice consisted of the Glebe and the tenth Part of the Township; therefore by the Value of the

O

Benefice,

The Intro-
duction of
Taxation by
Fifteenths,
with the Man-
ner of ascer-
taining and
rating them.

Pryn 671,
680.

The Manner
of collecting
and returning
the Fifteenths.

The Fifteenths
reduced to
certain Sums.
2 Co. 77.

The Introduc-
tion of Subsi-
dies.

Benefice, deducting the Glebe, they knew the true Value of the Township, and how to set a Fifteenth upon it: So that the Fifteenth of the Townships were certain Sums, that were set by the King's Taxors and Collectors under the Act of Parliament; and Commissions were granted to the Taxors and Collectors of them under the Great Seal: But in the collecting of the Fifteenths the Sums only appeared in the Books below.

And the Collectors of every Township, either returned their Collection into the *Exchequer*, or else there were Head Collectors for the whole County, who returned it thither; there were likewise Commissioners appointed, to supervise such Taxations, and Collections: But about the Time of *Edward* the Third, there were certain established Sums set upon every Township, and so, as the King's wants encreased, they gave one, two, or three Fifteenths.

We find in the Times of *Henry* the Eighth, *Queen Elizabeth*, and King *James* the First, that they raised both Subsidies and Fifteenths; this was, because the Value of Things encreased, and therefore the old Fifteenths were not according

according to the then true Value of the Townships.

And therefore they contrived that the Subsidy should be raised by a Pound Rate upon Lands, and likewise a Pound Rate upon Goods; and we find in the Subsidy 4 *Car.* (which is said to be the greatest Subsidy that ever was given, and which passed upon the Petition of Rights) there was 4*s.* in the Pound laid upon Land, and 2*s.* 8*d.* upon Goods; now 4*s.* upon Land amounts to three Fifteenths, and 2*s.* 8*d.* which was upon Goods to two Fifteenths; but in this they had no Regard to the old Rates made in the Tax Book of the several Townships, otherwise than to discover the Value of the Lands; but a Method is chalked out by the Act of Parliament to appoint Commissioners, Assessors, and Collectors, in order to rate and get in the said Subsidy.

How Subsidies were rated.

The Manner of rating Subsidies during the Civil Wars.

This was found very inconvenient, because the Commissioners used to be favourable to their own Country, therefore it was found necessary to revive so far the ancient Method, as to appoint a certain Sum; and in the Time of the Civil War, the long Parliament would not settle any Persons to appoint Commissioners, but the Appointment of Com-

missioners was made in the Act itself: And in this new Manner of taxing, they appointed the Sum to be levied on each particular County, in the Act itself; as well as the Commissioners Names that were to levy it: And the six associated Counties, *viz. London, Middlesex, Kent, Sussex, Surrey, and Hertford*, being not spoiled and pillaged in the Civil Wars, and more hearty to the Parliament Interest, were taxed higher than any other Counties in *England*.

The Introduction of the Land-tax, and the original Manner of raising it.

After the Revolution, to support King *William* in his Wars with *France*, it was necessary to come into a *Land-tax*; and from 1684 to 1693, the Tax was made by a Pound Rate, like the former Subsidies; but when the People found that the War was like to hold, about 1693, the Tax was mightily lessened, every Body being willing to ease his Neighbour; and then they came to lay a Rate upon every County, and the associating Counties, being very zealous for the Government in the Revolution, and having taxed themselves higher than their Neighbours in 1693; it was argued that those Counties were better able to bear the Tax, and therefore in 1693, they laid the *disproportioned* Sums that are now the Standard of the Land-tax: Let us
now

now compare the Subsidy Law, 4 *Car.* 1. with the present Land-tax, and consider the Manner of gathering them.

In the old Time, according to the way of making War then used, the Tenants *per Baroniam* and by *Knights Service*, as is herein before mentioned, were obliged to be in the Camp 40 Days, at their own Expence, and the Escuage was levied upon the Defaulters; but when the Art of War improved, and Armies were brought into the Field that continued a long Time, they made their Taxation by way of Subsidy.

The *Subsidy* was so much in the Pound upon the Personal and Real Estate; as the Subsidy of the fourth of King *Charles* was 2 *s.* 8 *d.* *per* Pound on the Personal, and 4 *s.* *per* Pound on the Real Estate; and where there were different Times of Taxation and Collecting, they were called so many different Subsidies; and the *Spirituality* gave their Tax in *Convocation*, and the *Temporality* in *Parliament*; but the *Convocation* Tax always passed both Houses of *Parliament*, since it could not bind as a Law till it had the Consent of the Legislature.

Their Tax was made according to the Rate in the *King's Books*, and since

The Reason for changing Escuage into Subsidies.

Subsidies were a Pound Rate on Personal and Real Estate. Poulton's Stat. 1443.

How given by the Spirituality and Temporality.

In what Manner the Tax on the Spirituality was rated.

a Tenth was paid yearly to the Crown, they only taxed the other nine Parts as they stood in those Books.

How different from the Taxation of the Temporality,

The Temporalty and Spirituality were taxed in the same Manner as to their *Personal* Estate, but as to their *Real* Estate, what was given in Convocation excused their Tax *quoad their Spiritualities*.

How the Commissioners of the Subsidies were appointed,

The Commissioners for executing the Act, were appointed by the Lord Chancellor, Lord Treasurer, and other great Officers of the Crown, or any two of them, the Lord Chancellor being one.

Differences between the present Land-tax, and the former Subsidies.

The *present* Land-tax, though it follows the Plan of the Subsidies, *viz.* in taxing so much on the Personal, and so much on the Real Estate, yet it differs in two material Circumstances, *viz.* that there is a Sum imposed on each particular County, and that the Commissioners are named in the Act itself; this came in in the Time of the Civil War, in this Manner; they had first taxed according to the Pound Rate, but when the Zeal of the People fell off, they found it necessary to set a Sum upon each particular County; and so they taxed them according to the highest Sum that had been levied in such County, and obliged them to make it up;

up; and they being then in Opposition to the Crown, they named the Commissioners in the Act itself; and this way of taxing was afterwards followed at the Restoration, because they found it for the Ease of the Crown to name *particular* Sums in the Act of Parliament, and then they named Commissioners also, who were to assess and rate each particular Inhabitant.

The Commissioners by the *Subsidy*, were *duly* to execute that Act; but by the *Land-tax*, they were directed in a *particular Manner* how they should do it: That is to say, by making the Distribution of the particular Sum upon each particular Hundred, Lathe and Wapentake; but by both Laws, they were to subdivide themselves, and the respective Commissioners were not to act out of their District.

The *Commissioners* by the *Land-tax*, are to give a Note to the Receiver General, of the Names of the acting Commissioners, and Sums, in each Division.

I do not find this Clause in the old Subsidy Law, because it was not necessary, where there was not a particular Sum imposed on each County.

In what Respects the Commissioners of the Subsidies, and of the Land-tax are different, and in what Respect the same.

In the Land-tax the Names of Commissioners, and Sums, to be sent to the Receiver General.

But not by the Subsidy Law.

Commissioners
both of Land-
tax and Sub-
sidies to issue
Precepts to
Constables,
and appoint
Assessors.

The *Commissioners*, both in the *Subsidy* and *Land-tax*, were to issue their Precepts to the Constables and other Inhabitants, and to appoint Assessors; and by both Laws, the Commissioners are to give them in Charge, to make a just Assessment, and to return such Assessments to the Commissioners.

Names of Col-
lectors to be
returned.

The Commissioners by the Land-tax, were to return the Names of Collectors.

Appeal to
Commissioners
by both Laws.

By both Laws, the Persons aggrieved might appeal from the Assessors to the Commissioners; and also Stock upon Land is excused from paying as Personal Estate.

Collectors of
Subsidies and
Land tax,
how to be
appointed.

By the Subsidy Law, the *Commissioners* appointed Collectors; but by the Land-tax, the *Assessors* brought in the Names of the Collectors; because the Place was answerable for the Sums so assessed until they were paid in to the Receiver General; and therefore it was necessary that the Assessors should appoint Collectors: But by the Subsidy Law, there was no particular Sum *locally* fixed; and therefore the Collectors were appointed by the Commissioners, who acted in Behalf of the Crown; and the Collectors Names were returned in, by both Laws, to the Receiver General or High Collector; and
this

this Disposition was, that the Receiver might know in whose Hands the Money was.

In the Subsidy, the Commissioners appointed the High Collectors in each Shire and Division, to whom the Sub-Collectors were accountable, and the High Collectors were Accountants to the *Exchequer*; and one Duplicate of the Assessments was given to the High Collector, and the other returned into the *Exchequer*, to be a Charge upon the High Collector's Receipt: But according to the Frame of the Land-tax, the Receiver is now appointed by the Lord Treasurer; and by this Law, a Duplicate of each particular Division is to be given to the Receiver General, and another to be returned into the *Exchequer*; the Duplicate returned to the Receiver, is to charge the Collectors, and that returned into the *Exchequer*, to charge the Receiver General.

On whom Receipts of the Subsidies and Land-tax respectively were charged, and how accounted for.

The High Collectors, by the Subsidy Law, gave Security to the Commissioners by Recognizance, to answer the Money by them received; but now, the Receiver General, by the Constitution of the Treasury, gives Security to the Crown.

In what Manner Security was given for the Receipt of each Tax respectively.

In

Power to distrain on Non-payment by both Laws; and who are Accountants at the Exchequer by each.

In the Subsidy Law and Land-tax, the Under Collector was to distrain the Parties refusing to pay the Sum assessed: And by the Subsidy Law, the Under Collectors paid in the Money collected to the High Collector, who was an Accountant at the *Exchequer*; but by the Land-tax, the Collectors are to pay in the Money to the Receiver, and he is the Accountant at the *Exchequer*.

Collectors on Non-payment to be imprisoned.

If the Collectors did not pay in the Money they had collected to the Receivers, the Commissioners were to imprison them, and seize their Effects; but if the Proportion was not answered, the Place itself was answerable, by a Re-assessment of the Commissioners.

Precepts to distrain.

By both Laws, the Collectors had Precepts and Assessments delivered; and, under such Precepts, had Authority to distrain the Lands and Goods of the Persons so assessed, by Virtue of the Act.

Parties to be taxed for Goods where they dwelt.

By both Laws, the Parties were to be taxed for Goods, in the Place where they dwelt.

Distress to be sold.

By both Laws, the Distress was to be sold, and the Overplus paid to the Owner; by the Subsidy Law, in eight Days; by the Land-tax, in four Days: And for Neglect, or Refusal, to pay, and

and failure of Distress, the Party to be imprisoned.

By the Subsidy Law, all the Commissioners joined in one Certificate; but now the Commissioners in each Division return their Estreats, which are a Charge upon the Receiver General, but in the Land-tax, if a Non-payment in any Place be certified by the Receiver under his Hand, *Exchequer Process* is to issue against the acting Commissioners.

Estreats how to be returned, and Process against the acting Commissioners on Non-payment.

By the Land-tax, if Land doubly taxed comes into Protestant Hands, and they get a Certificate from the Commissioners, and prove the Truth of the Certificate before the Barons, by two credible Witnesses, the Court of *Exchequer* is impowered to discharge such Sum from the Parish or Township in which the Lands lie, and that Discharge is carried to the House of Commons, in order to be discharged out of the General Sum the next Year.

How Land doubly taxed shall be discharged on coming into Protestant Hands.

C A P. XV.

*Of the Revenue of the Customs,
ancient and modern; and occa-
sionally, of the Constitution and
Jurisdiction of the King's Staples.*

Of the ancient
Trade to Eng-
land carried
on by the
Easterlings.

Antiquity of
the Cinque
Ports.

THE Trade of *England* was ori-
ginally very small, and carried on
merely by those which they called *Easter-
lings*, which were the Men of *Normandy*,
Picardy, *Flanders*, *Holland*, and so all
along to the *Baltic*: they were meer
Coasters, (and indeed all Navigation was
so before the Invention of the Needle)
and they used in Summer Time to come
over upon our Coast, and fetch away
our Wool, Woolfels, and Leather; and
the Men of *Normandy* and *Picardy* used
to bring Wines from *France*; and there-
fore the *Cinque Ports* were very ancient
Franchises or Markets, to which the
Commodities of Wool, Woolfels, and
Leather were brought, and where the
Wines of *France* were usually unladen;
and the *Cinque Ports*, all along from
Yarmouth to *Hull*, were used for *Expor-
tation*

tation of our own Commodities; but *Yarmouth* and *Hull*, seem anciently to be not much used for *Importation*, for that seems to have been in the *Cinque Ports* only.

There was an ancient Duty to the Crown which they called *Prisage*; which was a Liberty that the Crown had, of taking from every Ship that held twenty Tun of Wine, two Tun, one before the Mast, and one behind, at the Rate of 20s. each; so that the King had a *Preemption* in a Tenth, at his own Price: but we find, that all this Sort of Commerce was anciently transacted in pure Silver; such we received from them for our Wool, Woolfells, and Leather; and such we paid them for their Commodities: and therefore in several of our Records the Money bargained for is entered so many *Libræ Esterlingorum*.

Of the Nature
and Antiquity
of *Prisage*.

Edward the First, who was the Great *Justinian* of England, had travelled into the *Levant*; and from thence had fetched many new Institutions: for there he found, that upon all Commodities, both imported and exported, a *Vectigal* or Tribute was paid, to the State or Prince where such Importation or Exportation was made; and that this Acknowledgment

The Introduction of duties on Goods, exported and imported, by Edward I.

ment was founded upon the Protection that such Princes or States gave to their foreign Traders, and therefore by them chearfully submitted to. It was paid upon Goods *imported*, because the Merchant had the Liberty to sell them in that Prince's Dominions, and was protected by him in the Recovery of the Price from any of his Subjects: it was likewise laid upon the Goods *exported*, and that was by Way of ascertaining the Quantities and Values of what was to be sold to the Merchant.

Prisage changed into Butlerage.

Therefore when *Edward the First* came home, he altered the Nature of the *Prisage*, and instead of this *Preemption* of a Tenth, he laid the Imposition or Tribute of 2 s. in every Tun upon all foreign Merchants, which therefore was called *Butlerage*; because it was instead of the Tenth of the Wine in which the King had *Preemption*, and which was before looked upon as a Sort of Acknowledgment to the King's Butler; and therefore, from the Time of the Charge of it upon the foreign Merchant, it went by the Name of *Butlerage*.

The ancient Duties and Customs more particularly explained.

But to go more particularly into this Matter, it appears, that anciently the Kings of *England* had from the Merchants

chants the *Prisage*, which was a Right of *Preemption* of Wine, and other Commodities likewise, upon the Price set by the Officers of the Crown; they had also some other *petty Customs*, that were paid in Certainty upon Wares and other Merchandizes, for the Liberty of the Beam and Warehouses that were built for their Conveniency at the several Ports.

And the Statute of *Magna Charta*, cap. 30. says, that “*Omnes Mercatores* shall have safe Conduct, *ire per Angliam, tam per terram quam per aquam, ad emendum vel vendendum, sine omnib’ malis tolnetis, per antiquas & rectas consuetudines.*” This Law of *Magna Charta* was certainly made for the Encouragement of the Merchant; and the Design was, to establish those Customs of *Thronage* for weighing, and those Customs that were paid for the Liberty of the *Warehouse*, which were certainly ancient, and to abolish all unreasonable Oppression; but however the *Prisage* was then among ancient Customs, and that was subject to be abused to great Oppression, because the King’s Officers settled the *Preemption*.

The Encouragement given to Merchants by *Magna Charta*.

The Duty of *Thronage*, and for Liberty of the *Warehouse*.

This

The Charter
of Liberties
granted to
Merchant-
Strangers by
Ed. 1.

This *Prisage* being ancient, continued notwithstanding *Magna Charta*; and therefore it was settled by the Charter of *Liberties* granted to *Merchant-Strangers* by 31 *Ed. 1.* and thereby the *Prisage* was forgiven to the Merchant; the Charter is in these Words, (*viz.*) “ *Promittimus*
“ *præfatis Mercatoribus, pro nobis & hæ-*
“ *redibus nostris, in perpetuum conceden-*
“ *tes, quod nullam Prisam vel arresta-*
“ *tionem, seu dilationem, occasione Prisæ,*
“ *de cætero, de mercimoniis, merchan-*
“ *dis, seu aliis bonis suis, per nos, vel*
“ *alium seu alios, pro aliqua necessitate*
“ *vel casu, contra voluntatem ipsorum Mer-*
“ *catorum, aliquatenus faciemus aut fieri*
“ *patiemur, nisi statim soluto pretio,*
“ *pro quo ipsi Mercatores aliis hujusmodi*
“ *mercimonia vendere possint, vel eis*
“ *alias satisfacto, ita quod reputent se*
“ *contentos; et quod super mercimonia,*
“ *merchandizas seu bona ipsorum, per nos,*
“ *vel ministros nros, nulla appretiatio*
“ *aut æstimatio imponetur.*” And instead of the *Prisage*, several Duties were settled by this Charter between the King and Merchant, *viz.* *Pro supradictis autem Libertatibus et liberis consuetudinibus obtinendis, et Prisæ nris remittendis eisdem; supradicti Mercatores, universi & singuli*

“ *singuli, pro se, & omnib’ aliis de partib’*
 “ *suis, nobis concorditer & unanimiter*
 “ *concesserunt; quod de quolibet dolio vini*
 “ *quod adducent vel adduci facient infra*
 “ *regnum & potestatem nostram, & unde*
 “ *marenariis fretum solvere tenebuntur,*
 “ *solvent nobis, & Hæredib’ nostris, no-*
 “ *mine Custumæ, duos solidos, ultra*
 “ *antiquas custumas debitas & in dena-*
 “ *riis solvi consuetas, nobis aut aliis,*
 “ *infra Quadraginta dies postquam extra*
 “ *naves ad terram posita fuerint dicta*
 “ *Vina;*” and after mentioning several
 other Duties it goes on, “ *& similiter*
 “ *tres denarios de qualibet librâ ar-*
 “ *genti in educationem quaruncunq’ rerum*
 “ *& merchandizarum hujusmodi emp-*
 “ *tar’, in r’no & potestate n’ra præd’,*
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The Manner
of Trial in
Mercantile
Affairs insti-
tuted by the
Charter of
Liberties.

The Charter likewise sets forth the
Manner of Trial between the foreign
Merchants and Subject, in these Words;
“ *Quod in omnib' generib' placitor', (salvo*
“ *casu criminis pro quo infligenda sit*
“ *pœna mortis,) ubi Mercator implaci-*
“ *tatus fuerit, vel alium implacitaverit,*
“ *cujuscunq' conditionis idem implacita-*
“ *tus extiterit, extraneus vel privatus;*
“ *in nundinis, civitatib', sive burgis,*
“ *ubi fuerit sufficiens curia Mercator'*
“ *prædictar' terrar', & inquisitio fieri de-*
“ *beat; sit medietas inquisitionis de eisdem*
“ *Mercatorib', & medietas altera de aliis*
“ *probis & legalibus hominibus loci illius*
“ *ubi Placitum illud esse contigerit; &*
“ *si de Mercatoribus dictar' terrar' nu-*
“ *merus non inveniatur sufficiens, po-*
“ *nantur in inquisitione illi qui idonei*
“ *invenientur ibidem, & residui sint*
“ *de aliis bonis hominibus & idoneis de*
“ *locis in quibus Placitum illud erit.*”

Institution of
the Justice of
Merchants in
London.

There was also appointed a Justice in
London, who afterwards upon the Erec-
tion of the Staple was called the Consta-
ble: “ *Volumus & Concedimus, quod ali-*
“ *quis certus homo fidelis & discretus,*
“ *London' residens, assignetur Justiciarius*
“ *Mercatoribus memoratis, coram quo*
“ *valeant specialiter placitare, & debita*
“ *sua*

“ *sua recuperare celeriter, si Vicecomes*
 “ *& Majores eis non facerent de die in*
 “ *diem celeris Justitiæ complementum;*
 “ *& inde fiat Commissio, extra cartam*
 “ *præsentem, concessa Mercatoribus ante-*
 “ *dictis, scilicet, de hiis quæ sunt inter*
 “ *Mercatores & Mercatores, secundum*
 “ *legem mercatoriam deducenda.*”

All the Books that speak of *Butlerage* mention it as a Favour to the foreign Merchant, that instead of a *Preemption* of Wine in Specie there was this Duty of 2 s. laid upon each Tun; and no Doubt of it, when the Duty was first laid on, it was put upon this Colour, that it was instead of the *Prisage*, and as if better for the Merchant; and indeed thus far it was better for the Merchant, that it compounded with him for the King's setting the Price upon the two Tuns, which very often created grievous Exactions; for now the Tribute of *Butlerage* being laid *per Tun*, the Merchant knew upon what Terms he imported Wine into *England*: But the Policy of *Edward* the First was much deeper; for by this he hindered all Frauds in the importing of Wine, for if the Vessel had held above twenty Tuns, the King had no more than two Tuns by

The Advan-
 tages arising to
 Merchants as
 well as to the
 King from the
 Change of
 Prisage into
 Butlerage.

way of *Preemption*; and therefore, enlarging the Vessel was in fraud of the King: Besides, that by this Means, the King always received Money from the Merchant, whereas before the Merchant used to receive Money from the King, and to agree with the King for the *Preemption* before he would break Bulk; and now the *Prisage* lying only on the King's Subjects, when they had imported Wine, it was necessary for them to come to the King's Terms of *Preemption*; and that Money, being paid to the Subject, was not carried out of the Realm: So that by this Policy of *Ed. 1.* all the Money was kept within the Realm: For on the Wine imported by foreign Merchants, they paid the Butlerage in Money to the Crown; and for the Wine imported by the Subject, on which *Prisage* was due, the Money that the Crown paid for *Preemption* was paid to the Subject.

Origin of the
Duties on
Goods ex-
ported.

Edward the First also thought fit to lay *Impositions* upon his own Subjects, (that is to say) on *Wool*, *Woolfels*, and *Leather*; and that he did after the same way that was used in the *Levant*; having set up his Warehouses in every Port, and Scales for weighing the *Wool*, and appointed Officers that were to ascertain the

the goodness of the Commodity to the foreign Merchant. This served for many Purposes: First to ascertain the foreign Merchant that the Wares were good, and from thence it became profitable to the Merchant to go to the King's Staple; if he did not come to the Staple he was not protected by the Crown in his Purchases, for then he was liable to a Prosecution for forestalling the Market; but if he came to the Staple, then his Contracts might be sued in a summary way; and for this the Statute of *Acton Burnel*, Institution of] 13 Ed. 1. was made, which appoints that the Statute Staple. if the Merchant come before the Mayor of *London*, *York*, or *Bristol*, or before the Mayor and a Clerk appointed by the King, and have his Debt and Day of Payment there acknowledged, and his Recognizance entered on the Roll by the Clerk, then the Goods of the Debtor are to be sold, as far as the Debt doth amount, at the appraising of honest Men, after the Manner of Borough Goods deviseable, to satisfy the Debt; and if there be no Moveables within the Jurisdiction of the Mayor, but there be some elsewhere within the Realm, then the Mayor is to send the Recognizance made before him and the Clerks to the Chancellor,

The Court of Exchequer.

who is to direct a Writ to the Sheriff in whose Bailiwick the Moveables of the Debtor are, and the Sheriff is to act thereon, as the Mayor should have done, in Case the Debtor had had Moveables within the Power of the Mayor; and for Want of Moveables the Debtor's Body to be imprisoned until he hath made Agreement, or his Friends for him.

And if the Creditor do not take the Debtor alone for the Surety of his Payment, by Reason whereof Mainpernors be found, then the Mainpernors to come before the Mayor, and acknowledge the Debt in the same Manner as the principal Debtor. So that by this Statute, not only the Goods, as in common Cases, but the Body was subject to the Payment of the Debt.

Institution of Custom-houses, and the Origin of the Customs.

The next Thing projected by *Edward* the first, was to erect Houses in every Port, for keeping of Wares and Merchandizes, both imported and exported; and there was a particular Sum paid for the *Custodium*, which was called the *Customs*, and from whence I take the Word to be derived. For when *Edward* the first, *Richard* the first, or whatever King else, first erected those Houses, and appointed those particular Sorts of Payments,

ments, they could not be called *customary* or *usual* Payments ; for it is Solecism to say they were *customary*, or *usually paid*, at the first Beginning of them. The Subjects bore these Payments very well upon their Wool, Woolfels, and Leather, from the Convenience that arose from these Custom-houses ; for here was a Place to deposit their Goods in, and where the Merchant was to come to view them, and where they were sure of a Market ; then there was a Beam, Scales, and Weights, for the ascertaining the Quantities ; and there were Packers for seeing the fair Quantities of Wool and Leather in each Parcel ; and likewise Gaugers, to ascertain the Quantity of Wine in each Hoghead of the foreign Merchant.

This made very fair Transactions in all Trade, and drew a Confluence of Merchants to all our Ports. So that I do not think with my Lord *Coke*, that these *Customs* began by a general Law, but in the Manner herein before mentioned ; that is to say, that the King erected his Custom-house into a public Market, and there all Merchants were to come, to buy the Wares and Commodities of the Country, and to sell their own ; and the Payment of the *Customs* was in Nature of a

Toll, for the Admission of the Goods into such Warehouse. So that there is no Room to suppose, that they began by Act of Parliament which is lost; which is the common Refuge of the Lawyers when they cannot find the Original of Things.

Tonnage and
Poundage as-
certained by
Statute.

But when these Impositions became grievous to the Subject, there were Statutes to ascertain the Tonnage and Poundage upon all Imports and Exports; and this arose upon the 25 *Edward* 1., which may be seen in *Rastall's* Statutes, fo. 47.; wherein reciting the Fear of the Commons, that the Aids and Tasks that had been given towards the Wars might turn to the Bondage of them and their Heirs, because they might be at another Time found upon the Rolls, and likewise the Prices taken throughout the Realm by the King's Ministers; the King grants, that he will not draw such Aids, Tasks, or Prices, into a Custom: and henceforth it seems, that to increase any of these Aids, it was necessary to have an Act of Parliament.

The Improve-
ment of
Trade, and
State of the
Customs under
Ed. 3.

Thus stood Things in the Time of *Edward* 1., when Navigation was unimproved, and Ships were only Coasters from one Port to another; but in the
Time

Time of *Edward* the third, the *Portuguese* sailed to the *East Indies*, and from thence they fetched the Invention of the Needle, which was used by the *Chinese*: The Property of the Needle's turning to the North they say was known before, but the *Chinese* first used it in sailing; they made the Rhumbs round a Bowl of Water, and, by fixing a Needle in a Cork, it was turned towards the North; they had at first but 8 Rhumbs, (that is to say) East, West, North, and South, North-East, and North-West, South-East and South-West; but as Sailing improved, they found a better Way of managing their Needle, and extended their Compass to 32 Degrees. Now when the Art of Sailing improved, *Edward* 3. made use of the Trade of the Kingdom to maintain his Wars with *France*; and therefore he was said to have consulted with *Raymond Lully*, and that he had got the Philosopher's Stone, to make Money for the carrying on of his Wars. The true Secret was, that he had improved Trade by his Laws, and increased the Impositions upon Commodities: and therefore, the 14th of *Edward* the third, the Commons pray, that the King would take no more Custom of

Invention and Improvement of the Mariner's Compass.

14 E. 3. c. 19. Rastal. Stat. fo. 82.

Old Custom,
what.

a Sack of Wool than half a Mark, nor of Lead, Tin, Leather, or Woolfels, but the old Custom. Now this old Custom seems to be, that which was paid for the Custody of the Wares in the King's Warehouse before they were exported, and likewise what was agreed upon by the aforementioned Charter of *Edward* the first; but by this Statute they laid new Duties, *viz.* 40 s. on every Sack of Wool, 40 s. on every 300 Woolfels, and 40 s. on every Last of Leather, and other Merchandizes that pass beyond the Sea after the Rate: By this Statute also, every Man that shippeth Wools over the Sea, *Englishman* or other, resiant, inhabiting, or repairing in *England*, shall give Security to bring of every Sack of Wool, Plate of Silver to the Value of two Marks, at his first Return, or repairing.

The Jurisdiction, Liberties and Officers of the Staples settled, 7 Ed. 1. c. 2.

Edward the third, in the 27th Year of his Reign, appointed *Staple* Towns round *England*, *Wales*, and the Pale of *Ireland*; and that none of the Purveyors, who used to molest the Carriage of the Merchants in going from Town to Town, and thereby raise Sums of Money by Way of Prisage, should do so any more; and this opened a free Communication from one Town to another.

Wool,

Wool, Woolfels, Leather, and Lead, c. 3.
were to be brought to the *Staple*, and to
be transported by foreign Merchants;
and it was Felony for any *English, Welsh,*
or *Irishman*, to transport it: by this
Means all the Wool of the Kingdom
came under the King's Duty.

It was Felony to molest and take any c. 4.
thing from the Merchants.

The *Staple* had a Judicature apart; c. 5 & 6.
and if any of the King's Justices, or
other Officers, came into any of those
Places where the *Staple* was, they had
no Authority in Matters pertaining to
the Cognizance of the Mayor and Mi-
nisters of the Staple in that Place, either
Judicial or Ministerial: and this is the
Reason we have so little Concern in
mercantile Affairs in the old Books.

The further to encourage foreign Mer- c. 7.
chants, the King granted, that no Li-
cence should be given to any *English,*
Welsh, or *Irish,* to carry out our own
Merchandizes: this encouraged the Con-
flux of Foreigners into the Port, tho' it
discouraged our own Navigation, the Po-
licy of which was not then well under-
stood.

The Jurisdiction of the Mayor and c. 8 & 9.
Constables of the Staple is described, and
that

The Court of Exchequer.

that all People of the *Staple* shall be ruled by the *Law Merchant*, and not by the Common Law.

c. 10.

That the Weights and Measures be the same throughout the Realm.

c. 11.

That all Merchandizes be brought to the *Staple* to be sold.

c. 12.

Felony to carry Wool into *Scotland*, or sell any to a *Scotchman*.

c. 18.

Merchants of *Ireland* or *Wales* may bring their Merchandizes to the *Staples* of *England*.

c. 21.

The Mayor and Constables to be chosen yearly in every *Staple* Town, and what by their Office they may do.

c. 23.

Officers of the *Staple*, and Merchants repairing to it, to be sworn to maintain the Laws of the *Staple*.

c. 24.

Two Merchants *alien* shall be chosen to be associate in Judgment to the Mayor and Constables of the *Staple*; and if any Debates arise, the Matters in Question to be decided by the Chancellor and King's Council; and that 6 *Mediators* of Questions between Buyers and Sellers shall be chosen, of which four to be *Aliens*.

c. 28.

The Liberties of the *Staples* confirmed, notwithstanding the Franchises granted to Corporate Cities or Towns; other

other Mens Liberties being in the Staple saved.

Calais being not bound by the *English* Laws, a *Staple* was erected there, by the King, without Act of Parliament: and it was ordained, that all Merchandizes exported from *England*, *Wales*, and *Ireland*, should presently be carried to the Staple at *Calais*, and to no other Place beyond Sea; and in the Time of King *Henry* the 6th, it was made Felony, by Act of Parliament, to transport any Merchandizes to any Port beyond the Seas, but to *Calais* only. This created a double Profit to the Crown by paying Customs both in *England* and at *Calais*; and for what was exported from *Calais*; into *Germany*, or any other Place, there was another Custom paid.

Davis 63.
Erection of
the Staple at
Calais.

The Charter of 31 E. 1. was broke in upon by E. 3. in the 12th Year of his Reign: The Pretence seems to have been, that, in the *French* Wars, the Seas were very much infested by Pirates; and that therefore the King was at more than ordinary Charge in setting out his Fleet to scour the Seas; and the Losses that foreign Merchants sustained by those Piracies, seem to have brought them into these

Infringement
of the Charter
of Liberties,
by Ed. 3.

Cotton's Re-
cords 52, 53.

these farther Impositions; however they were laid on at first by the Consent of some of the Prelates and Nobles, but without the Commons. This Sir *Robert Cotton* makes to be the Original of *Tunnage* and *Poundage*; it was indeed the Original of laying it on under the Form of a Law, without Agreement with the Merchants; but it appears plainly, by the Charter of 31 *Ed. 1.*, that there was a *Tunnage* and *Poundage* before this Law.

History and
Nature of the
Duty of Tun-
nage and
Poundage.

This Custom of *Tunnage* and *Poundage*, in *Edward* the third's Time, was 2 s. upon every Tun of Wine; 2 s. upon every Sack of Wool passing the Seas; and 6 d. upon every Pound of Merchandize brought into the Realm; which must be intended to be the Pound in Point of Value: The Commons pray this may cease, upon which all was laid down, but 2 s. upon every Sack of Wool, to continue till *Easter* next ensuing.

Cotton's Rec.
63.

Afterwards it was ordained by the King, Peers, and Prelates, by the Assent of the Merchants, that every Sack of Wool should pay 12 d. safe Conduct: 25 *Ed. 3.* this was prayed to cease, but denied, the Time not being expired: but by the 25 *E. 1. cap. 6.*, which is called the Statute *de Tallagio non concedendo*,

Ibid. 75.

dendo, it is granted, that the King would take no Aids but by Consent of the whole Realm.

The next Tunnage and Poundage was 5 R. 2. c. 3. and granted for two Years of 2s. for every Tun of Wine, and 6d. *per* Pound of all Merchandizes coming into or going out of the Realm, and the Commons named Receivers to the King.

By 31 H. 6. c. 8. Subsidy of Wool granted for Life.

By 12 E. 4. c. 3. Tunnage and Poundage granted during Life.

By 6 H. 8. c. 14. The Tunnage and Poundage granted to Ed. 4. during his Life, enacted to stand good during the Life of H. 8.

By 1 E. 6. c. 13. Tunnage and Poundage granted during Life.

By 1 M. the same granted her for Life.

The *Book of Rates* seems to be as ancient as the thirty-first of Ed. 1. for thereby the Merchants agreed to be charged with the Pound Rate according to Value, and such a Pound Rate could hardly be well and equally affect without a Book of Rates; since, without such a Book, the Customs would be liable either to

Antiquity of
the Book of
Rates.

to the Oath of the Merchant, or the Oppression of the Officer.

Book of Rates
1586.

I have seen a *Book of Rates*, now extant, that was printed 14 Oct. 1586. and it refers to the before mentioned Statute in the first Year of *Philip* and *Mary*, and mentions a former Book of Rates, and begins with *A. B. C.'s*, the Gross containing twelve Dozen in Paper 3 s. It is plain that this Book of Rates was composed by setting of Values according to the real Price of the Commodities; the Statute of *Philip* and *Mary* settles 12 d. per Pound, according to the then Valuation; and the Preface to this Book of Rates recommends the Alphabetical Order of the Book.

Different
Forms of the
Books of
Rates.

It seems indeed the Poundage would have been very discretionary, and left much in the Power of the Officers, and on the Oath of the Merchants, if there were not a Book of Rates: And it seems, that in Queen *Mary's* Time, as the Value of things encreased, they put out the Addition of a Book of Rates before mentioned, and this became the Standard during the whole Reign of Queen *Elizabeth*, and until the sixth Year of *James* the First. Now the Subsidy being given in the first Year of his Reign, and the Value

Value of Commodities having considerably increased, he rectified that by Letters Patent, dated in the sixth Year of his Reign; and there he puts the old Subsidy in the first Volume of the Rates, and the increased Value by way of Imposts: These Impositions were exceedingly grumbled at, during the Reigns of King *James* and *Charles* the First. In Queen *Mary*'s Time, when *Calais* was taken, it was very necessary to increase the Rates, because all the *Calais* Duties were at an End; and therefore the above mentioned Book was made as a new Standard of Rates, and not by way of old Subsidy and Imposts; for it seems, that whenever any Tunnage and Poundage was laid on by Act of Parliament, they then looked over the old Subsidy, and added Rates by way of Imposts: And the Book of King *James* seems to have renewed the old way; for he takes the Rates that were settled in the Time of Queen *Mary* by way of old Subsidy, and where the Value of the Goods was greatly increased, he doubles it as a new Taxation upon the Merchant, under the Act of Parliament, by way of Impost; but on those Goods, whose Values had not altered, the old Subsidy remained.

Q

During

Scobell's Acts
136.

During the Parliament Times there was a Book of Rates again made, and that was signed by the Speaker of the House of Commons, and is mentioned in the Ordinances of 1647.

After the Restoration they came to this Temper; that the Subsidy was given to the King for Life, to preserve his Dominion of the Seas: But the Book of Rates was signed by the Speaker; and that Book of Rates is referred to in the Act of Parliament.

C A P. XVI.

Of the several Officers of the Customs, antient and modern: With the Manner of collecting that Revenue: And an Account of the Titles of the several Duties as they were accounted for by the Receiver-General of the Customs to the Auditor in the Year 1724.

WE come now to the Officers that attended the Customs, and their Manner of accounting. Of the antient Officers of the Customs.

They had antiently, in every Port, a Customer, Comptroller, and Searcher, who took care of the Duties of all Goods imported or exported: These are mentioned in Cotton's Records, 17 E. 3. fo. 38. to these a Collector has since been added, who has a Deputation from the Customer for the antient Duties, and is appointed to take care of the modern Duties.

The Duty of the Office of the Customer was to receive the Customs; and he was to charge himself upon Oath, and to discharge The Duty of the Customer.

charge himself by Tallies of Payment.
 By 14 R. 2. c. 10. 17 R. 2. c. 5. 1
 H. 4. c. 13. 4 H. 4. c. 20. 31 H. 6.
 c. 5. the *Customer* was to have no Estate
 certain in his Office but only during
 Pleasure.

The Duty of
 the Comp-
 troller.

The *Comptroller* was the Person that
 enrolled all the Payments at the Custom-
 house; and that Enrolment was a Charge
 upon the Customer, to account for so
 much Custom received, to the King's
 Use.

By the aforesaid Statutes this Officer
 likewise was only to be constituted du-
 ring the King's Pleasure.

The Duty of
 the Searcher.

The next Officer was the *Searcher*; and he anciently received the Warrants and Cockets from the Customer and Comptroller to unlade or lade the Goods; When the Merchant had paid his Customs to the Customer, he had a Warrant from the Customer and the Comptroller to land the Goods, but if he landed them before the Customs were paid or compounded for, the Goods were forfeited, and the *Searcher* was to make a Seizure of them.

The antient
 Manner of
 entring the
 Exports.

If the Goods were to be shipt out-
 wards, then they went to the Customer
 and Comptroller, and entered the Goods,
 and

and paid the Customs, or agreed for the Customs outward; and when such Payment or Agreement was made, they received from such Customer and Comptroller a License to export such Goods, which was called a *Cocket*.

This Word *Cocket*, *Skinner* derives from the *Cockboat*, because the taking in this Schedule was an Emblem that the Ship was going to Sail; and if there were any Goods in the Ship not mentioned in the *Cocket*, they were forfeited: This *Cocket* went to the Searcher, whose Office by the before mentioned Statutes was only during Pleasure.

The Derivation of the Word *Cocket*.

The 14 R. 2. c. 10. mentions, with the Customer, Comptroller and Searcher, the *Weigher* and *Finder*; and that these were to be Officers only during Pleasure.

The Weigher and Finder.

The *Weigher* was the Person that attended the King's Beam, and received the Duty of Thronage, and he likewise was another Cheque upon the Entry of the Merchant.

The Duty of the Weigher.

The *Finder* was the Person that presided over the Assay of Gold and Silver.

The Duty of the Finder.

The 13 H. 4. c. 5. mentions the *Gauger* of Wine as a Port Officer.

Gauger of Wine.

The Duty of
the Surveyor.

The *Surveyor* came in in the Time of *Henry* the Sixth, as a Cheque upon the Searcher, and to prevent any Fraud in letting more Goods be exported or imported than were mentioned in the Warrant or Cocket; and therefore in the 20 *H. 6. c. 5.* he is called the *Surveyor of the Searcher*; and he with the rest of the Port Officers are forbidden to keep Taverns, or to be Factors for Merchants.

Patent Officers.

These seem to be the ancient Port Officers, and hold their Offices by Patent from the Crown; though by the Statutes before mentioned they should only be made during Pleasure.

Tide-Waiters
and Land-
Waiters.

The *Tide-Waiters* and *Land-Waiters* seem originally to have been only Servants to the Searcher and Surveyor; though now they are by Warrant from the Treasury.

Patent-Officers to have
no Deputies.
Customers, &c.
nor their De-
puties to have
Ships, &c.

The Patent-Officers by 1 *Hen. 4.* were to have no Deputies.

No *Customer*, *Comptroller* or *Searcher*, nor their *Deputies*, &c. shall have Ships, buy or sell by way of Merchandize, keep Wharfs, Keys, Hostreys, or Taverns, &c. by which it appears that Deputies were then allowed, and the Customers do now make their Collectors their Deputies.

The

The first Statute that mentions the *Collector* is 3 *H. 6. c. 3.* which says, that if any Customer, Collector or Comptroller shall be convicted of Concealment, he shall forfeit the treble Value.

Collector of Subsidies.

The Collector here does not mean the *Collector of the Customs*, for that Officer came in much later; but the *Collector of the Subsidy* of Tenths and Fifteenths, and the Customer was then the only Collector of the Customs.

Now when the Customs were settled, by 12 *Car. 2.* the King let them to Farm for a Term of Years; and the Meaning of that was, that the Odium might fall upon particular Persons, and not upon the Crown: And these Farmers established Collectors of their own, and when their Term determined, then Collectors were made by Warrant in the several Ports.

Farm of the Customs by Charles the Second.

Now we come to the modern way of Proceeding, and the several Officers concerned in the Importation and Exportation of Goods and the Accounts touching the same.

Of the modern Officers of the Customs, and Method of Proceeding in the Custom-houses.

The Master of every Merchant Ship, is within three Days after passing by *Gravesend* in the Port of *London*, and immediately upon his Arrival in any of

13 & 14 *Car. 2.*

The Manner
of reporting
the Ship and
Cargo in the
Port of Lon-
don.

† 12 Car. 18.
13 & 14 Car.

1 W. & M.
4 & 5 W. & M.

Duty of the
Surveyor of
the Act of
Navigation.

12 Car. 2.
and 7 & 8
W. 3.

the Out-Ports, to make a true Report, of the Marks, Numbers, Quantity, Quality, and Consignment, of his Cargo; also of the Name, Tonnage, and Property of his Ship, whether it is * *British* or Foreign built, and the Port to which it belongs; the Names of the respective Place or Places where he took the Goods on Board; the Number of Mariners, and how many Foreigners there are among them; because † *British* Ships are to be navigated by a Master and three Fourths of the Crew *British* Men, on Penalty of Forfeiture of the Ship and Cargo; except Ships laden with Corn, which may be sailed with a Master and two Thirds *British*; and Ships trading to *Greenland*, which may be navigated with one Third of the Crew *British*.

The *Surveyor of the Act of Navigation*, made 12 Car. 2. is to take care that Ships be regularly manned, and that all other Directions in that Act contained be duly complied with. *British* built Ships only, regularly manned, are allowed to be employed in the Trade to and from the *British* Plantations in *Asia*,

* N. B. Where, in the Acts made before the Union, the Word *English* is used, it is here changed for *British*.

Asia, Africa, and America, on Forfeiture of Ship and Cargo.

Goods of the Product or Manufacture of the said Plantations are to be brought to *Britain* only, and not * *Ireland*, except after entring and landing in the former; for Performance whereof Bond is to be taken, either || here, or in the § Plantations, and no Goods are to be carried thither but from *Britain*.

Importation
of Plantation
Goods.

12, 22 & 23

Car. 2.

* 7 & 8 W. 3.

|| 12 Car. 2.

§ 7 & 8 W. 3.

15 Car. 2.

All Goods, of the Product or Manufacture of *Asia, Africa, or America*, are to be brought from no other Country but that of their Product or Manufacture, or from those Parts where they have been usually first shipt for Transportation.

12 Car. 2.

Foreign
Goods to be
imported from
their Place of
Product only.

Certain Goods, viz. Wine, Corn, Sugar, Brandy, Hemp, Timber, all *Turkey* and *Russia* Goods, and others in the Act mentioned, are to be imported either in *British* Ships, or Ships of that Country only whereof they are the Product or Manufacture, or of such Port where they have been usually first shipt for Transportation.

What Goods
to be imported
in British
Ships, or in
Ships of the
Country, of
their Product.

The Subjects of *Britain, Ireland*, or the *Plantations*, and no other, are to be accounted *British* Men; but foreign Mariners, serving two Years in a *British* Ship, are to be reckoned *British* Subjects.

Who shall be
deemed Bri-
tish Men.

12 & 14

Car. 2.

6 Ann.

The

14 Car. 2.
Reports to be
on the Oath
of the Master,
or of his
Mate in case
of Sick-
ness, &c.

The Master of the Ship is to make Oath to his Report, before the Collector, Comptroller, Surveyor, and Surveyor General; or any two of them, in the Port of *London*; and before the Collector, Customer, and Comptroller, or any two of them, in the Out-Ports; but in case of Sickness, &c. the Mate of the Ship is allowed to make Oath to it, upon making Affidavit of such Disability in the Master to attend.

13 & 14 Car.
2. c. 11.

Purfers of
East-India and
other Compa-
nies Ships may
report.

The Purfers of the Ships, belonging to the *East-India*, *South-Sea*, and other *Companies*, are permitted to report them as well as the Masters.

1 Eliz.

14 Car. 2.

Persons ma-
king Report to
answer Que-
stions of Offi-
cers on Oath.

Masters, Owners, or Purfers (taking Charge of Ships or Goods for that Voyage,) are upon reporting Inwards or Outwards, to answer on Oath, if required, to all such Questions, concerning his Cargo, as shall be asked by the Customer, or other Officer, under the Penalty of 100 l.

12 Car. 2.

Report to be
made at the
first Port of
landing.

At the first Port any Goods are to be entered in, the Master must make a Report of his whole Cargo; and distinguish therein, what Goods are there to be delivered, and what at any other Port.

13 & 14

Car. 2.

Captains of
Men of War.

Captains of Men of War, importing Goods, are also to make Reports on Oath,

Oath, and are liable to the same Rules and Searches as Merchant Men.

The *Bench Officers* in the Port of *London*, who administer all Oaths, are the Collectors inward and outward, the Comptroller, the Surveyor, and the Surveyor General, who are all appointed by Patent.

Bench Officers in *London*, who.

The Collectors of the Out-Ports are constituted by Warrant from the Treasury, but the Customers, Comptrollers, and Searchers, by Patent.

Officers in the Out-Ports by Warrant from the Treasury and by Patent, who.

The Merchant is allowed 20 Days from the Ship's Report, to make Entry of his Goods, and pay the Duties; in some Cases he may give Bond for Payment of Part of them, as for Tobacco, Wine for Sale, *East-India* Goods, and Coals.

14 Car. 2. Time for Entry of Goods, and Payment of Duties.

The *Receiver-General* receives from the Collectors in *London*, all Tobacco and Wine Bonds; which if they are not discharged, before, or soon after they become due, are delivered to the *Solicitor of the Customs*, in order to be put in Suit. The *Solicitor* has also the Management of all Prosecutions, and other Law Affairs, relating to the Customs.

Duty of the *Receiver General and Solicitor* in the Case of Bonds for Duty on Tobacco and Wines.

In the Entries of Wine a Distinction is to be made, whether it be imported by way

The different Manners of entring Wines imported.

way of Merchandize, and with Intent to sell again; or for private Use; or by Vintners and Retailers; (of which in the two former Cases Oath is to be made) because the last pay the highest Duty, and the Importers of Wine for private Use, though less than they do, yet pay more than Merchants do, for Wine for Sale.

Entry of
Wines in
London by
Certificate.

The Duty on *Wines* being higher in the Port of *London* than in the *Out-Ports*, such as have been there entred, and are afterwards brought hither by *Certificate*, are to pay so much more Custom here as they before paid short of the *London* Duty.

12 Car. 2.
Petty-Custom,
what.

There is an extraordinary Duty (called *Petty-Custom*) payable by Strangers, on all Goods inwards, and by *British* Men, on Wine, Brandy, Sugar, and certain other Commodities, when imported in foreign Bottoms; over and above what is payable on the same, if imported in *British* built Ships.

12 Car. 2.
Goods may be
entered Part in
one Port, Part
in another.

Merchants may enter Part of their Goods in one Port, and the Remainder in another.

2&3 E. 6. c. 22.

Forfeiture of
Goods entered
in Prejudice of
the Revenue.

Any Person that enters the Goods of another, to the Prejudice of the Revenue, forfeits

forfeits all his Goods and Chattels Personal for ever.

If a Merchant, for Want of an In-voice, or Account from beyond Sea, is not capable of making a true Entry of the Quantity or Quality of his Goods, whereof he must make Oath, he may apply to the Commissioners, for their Order to have them landed and examined by some of the Waterfide Officers; which is called *a Sight*; whereupon they certify, upon the Warrant, the Quantity and Quality of the same, according to which the Entry is then to be made.

When a Merchant finds he has entered short of the Quantity of Goods consigned to him, he makes a *Post Entry* of the rest; and if he happens to make an *over Entry*, after the same is certified by the Waiter on his Warrant, and he has made Oath thereof, he has an Allowance for it, which is paid him by the Receiver General.

Goods not entered within 20 Days from the Ship's Report, may be carried into the King's Warehouse; to which if no Person lays Claim within 12 Months, they are sold by Auction at the Custom-house, by the Warehouse Keeper; and the Money arising thereby is paid to the Col-

12 Car. 2.
9, 10 W.
The Manner
of Entry on
Sight.

The Manner
of making
Post-Entries,
and being al-
lowed for
Over-entries.

Goods not en-
tered in due
Time to be
sold within
12 Months, if
not claimed.

Collector ; but the Merchant, at any Time afterwards, (upon Application to the Commissioners, and their Order thereupon,) is to be repaid, by the Collector, all the Money his Goods were sold for, (of which the Warehouse Keeper gives him a Certificate,) over and above what the Duties which were payable upon the same came to.

The Duty of
Tidesmen.

A competent Number of *Tidesmen*, (at the Discretion of the *Tide Surveyors*,) are sent from *Gravesend* on Board all Ships, upon their Arrival there ; and attend therein, to prevent their running of Goods, till the Ships are cleared.

14 Car. 2.
Prohibited and
uncustomed
Goods may be
sent to the
Warehouse.

Officers of the Customs may send to the Warehouse, from on Board Ships, *prohibited* Goods, and such *uncustomed* ones, as they shall suspect to be intended or seem liable to be run.

Run Goods to
be seized and
sold.

All *run Goods* seized, are also carried into the Warehouse, and are sold every Term, to the highest Bidder, in the Court of Exchequer.

14 Car. 2.
Foreign Books
to be imported
in London
only.

All *Books* from beyond Sea, are to be brought to the Port of *London* only ; where there is an Officer appointed to examine them in the Warehouse, and see that there are no *Popish Books* among them, which are to be burnt.

3 J. 1.

If Goods are found *concealed*, after a Ship is cleared, and the Tidesman discharged, the Master is to forfeit 100*l.* by 14 *Car. 2.*—But if not reported, and found after clearing the Ship, the Goods are to be forfeited by 5 *Geo.*

14 *Car. 2.*
Forfeiture on
Goods con-
cealed after
the Ship is
cleared.

Goods shipped by Certificate, if relanded in *Great Britain*, are forfeited, and no Drawback is to be paid for them.

14 *Car. 2.*
8 *Annæ*,
Goods shipped
by Certificate,
if relanded, to
be forfeited.

No Ships are to trade *Coastwise*, but such as belong to *British* Men, and are regularly manned, under Penalty of forfeiting Ship and Cargo.

12 *Car. 2.*
None but Bri-
tish Ships to be
Coasters.

Goods shipped Coastwise, without a Sufferance or Warrant from the proper Officers, are forfeited.

14 *Car. 2.*
Goods shipped
Coastwise,
without War-
rant, are for-
feited.

The *Register of Seizures* is to keep a Register of all Goods, Ships, and Merchandizes, seized in all the Ports of *England*, and of all Suits concerning them.

Duty of the
Register of
Seizures.

Officers of the Customs, authorised by *Writ of Assistance* out of the Exchequer Court, may, with a Constable, in the Day-time, enter any House, &c.; and in Case of Resistance, break open Doors, &c., to seize any Kind of prohibited and uncustomed Goods, and bring them to the Warehouse.

Officers, by
Virtue of a
Writ of As-
sistance, may
break open
Doors to seize
prohibited
Goods.

Goods

5 Geo.
Goods prohi-
bited or re-
landed are for-
feited.

Goods *prohibited* to be worn here,
and *foreign* Goods *relanded*, are for-
feited.

Unrated
Goods pay
Duty ad Va-
lorem.

Such Goods as are *not rated*, either in
the old Books of Rates made 12 Car. 2.,
or the additional Book of Rates 11 Geo.,
the Merchant pays Duty for *ad Valorem*,
to be ascertained by his Oath, which is
administered to him by the Bench Of-
ficers.

How the Va-
luation of un-
rated Goods
shall be made.

In valuing *unrated* Goods, which are
to pay the Customs, the Merchant is al-
lowed to deduct the Amount of the said
Customs, from their real Value at the
Port of Importation, before he swears to
it; tho' not freight Fees, or any other
Charge: but in setting a Value on such
Goods as are to pay the new Duties, no
Abatement on Account of those, or any
former Duties, is to be made; and the
Merchant is to make Oath to the real
Worth of them.

Importers of
damaged
Wine need
not pay Duty,
on staving it.

Importers of *Wine*, finding the same
damaged, corrupt, or unmerchantable,
may refuse to pay or secure the Duty of
it; but must thereupon stave, spill, or
otherwise destroy it, in the Presence of
two or more Officers; the Merchant has
an Allowance in Consideration of Freight
&c.

8 G.
Allowance to
Importer
thereon.

&c. of such Wine, but not unless imported from the Place of its Growth.

Importers of damaged or mean Tobacco, are to have no Allowance (as before) on that Account; but if the Merchant refuse to pay, or secure, the Duties of any, he may cut off so much as he shall refuse to pay Custom for; which is afterwards to be burnt: The Merchant has no Allowance for Freight &c., except for such Tobacco as is so damaged at Sea, or in Port, that he shall refuse to pay Custom for.

9 G.

Importers of damaged Tobacco need not pay Duty, destroying it.

Prohibited, and customable Goods, found by any Officer of the Customs in any Boat, and without the Presence of an Officer; or on Information of one or more credible Witnesses, in any House &c.; may, on a regular Search, be stopped by him, and put into the Warehouse, till Proof be made on Oath, of there having been Duty paid for them, or their having been bought, in a lawful Way of Trade, of such Person, as the Deponent verily believes, paid Custom for them.

Prohibited and customable Goods found out of the Presence of an Officer, may be stopped, till Proof made of Duty being paid.

The Custom, new Subsidy, $\frac{1}{3}$ Subsidy, and Impost, on Tobacco, are now included in one Bond, payable in eighteen Months, commencing from the Date of it,

12, 13 Annæ;
At what Time Bonds for Duty on Tobacco are made payable.

R

it, or the End of 13 Days from the Ship's Report, which shall first happen; except the Merchant only give his single Bond, in which Case it is payable in 15 Months, and the Tobacco is, for Security, put into a Warehouse, under the joint Locks of the Commissioner and the Merchant; but this is very rarely done.

Bonds for Duty on Wine.

12 Car. 2. 11.
& 13 W. 3.
8 Annæ.
2 W. & M.
9 & 10 W.

Bonds for Custom and Import on Wine are payable in 9 Months, the latter at 3 Payments, (each 3 Months after the other,) and for the additional Impost on *French Wine, Silks, &c.* and for the new Duty on *Whale Fins*, are all payable in 12 Months, the two last at four Payments.

Bonds for Duty on Coals.

Bonds for the Duties on Coals, are payable in three Months.

Duty of four and an half per Cent. how answered.

The *Husband of the Duty of 4 $\frac{1}{2}$ per Cent.* receives from the Collectors in *Barbadoes* and the *Leward Islands*, the Money and Sugars &c. there collected by them; and having sold these Commodities, (in which this Duty is generally received here), he pays the Money in his Hands to the Receiver General.

The Method of receiving the Duties, and accounting for, and paying them into the Exchequer.

The Duties are received by the *Collectors of the respective Ports* where the Goods are imported or exported, who pay them to the *Receiver General of the Customs*;

Customs; and the Comptrollers of the Ports transmit monthly an Account to the Comptroller of the Customs of all Goods imported and exported, and of the Duties paid and the Allowances to be made; and the Receiver General makes up weekly Certificates of his Receipts and Payments, Copies whereof he sends to *the Treasury*, and the Commissioners of the Customs, and pays weekly into the Exchequer the Money remaining in his Hands, for which he there receives Tallies, acknowledging the Receipt of it.

The *Comptroller of the Port of London* is to cheque the Collection in general, and to see that the Collectors take proper Securities to Bonds. Duty of the Comptroller of the Port of London.

The *Inspector General* of the Imports and Exports, from the Entries inwards and outwards, makes up Accounts of all Goods imported from, or exported to, other Countries; and by setting a Value on them prepares an Estimate of the Ballance of our Trade with those Countries. Duty of the Inspector General.

All Oaths for *inward* Business are made out at the *Clerk of the Ship's Entries Office*, (who is one of the Deputies to the Collector inwards,) and for *outward* Business Duty of the Clerk of the Ships Entries, and of the Usher of the Custom-house.

finers by the *Usher of the Custom-house*, who is a Patent Officer.

Deputies of
the Collector
of Imports.

In the Port of *London* the *Collector inwards*, has 3 Deputies for managing the Receipt, *viz.* one for the grand Receipt of Customs, one for the Duties on Wine and Vinegar, and one for Customs on Plantation Goods.

Collector of
the Duties on
Coals.

There is a particular *Collector for the Duties on Coals*; and there are three *Collectors* for the Duties on *Goods exported*, *viz.* one for the Subsidy outwards, one for the Duty on white Woollen Cloth, and one for Custom on Leather.

Collectors of
Exports.

Duty of the
Register Ge-
neral of Ship-
ping.

The *Register General of Shipping*, has an Account from the Entries of the several Collectors in each Port, of all trading Ships belonging to *Great Britain* whereof he keeps a Register.

Duty of the
Inspector of
Prosecutions.

The *Inspector of Prosecutions*, is to keep an Account of all Prosecutions carried on by the Officers of the Customs, and to take Care, that the King's Moiety of Seizures, and all Fines and Forfeitures, be paid into the Exchequer.

Duty of the
Secretary.

The *Secretary* attends the Board of Commissioners, to take the Minutes &c.; and from his Office are dispatched all Letters, Orders, and Instructions, from them to the Officers of the Customs in *Great Britain* and the Plantations.

The

The *Surveyor of the Out-ports*, is to examine the Collectors quarterly Accounts. Duty of the Surveyor of the Out-ports.

The *Inspector of the Out-ports* of Collectors Vouchers, is to examine the Vouchers they take for their Disbursements. Duty of the Inspector of the Out-ports.

The *Searchers at Gravesend* are to examine, whether the Loading of outward bound Ships be agreeable to the Cockets, which are sent them for that Purpose. Duty of the Searchers.

The *Land Surveyors* attend on their Stations, to see that the Waiters do their Duty, and to judge what Allowances are proper to be made to Merchants for Damage to their Goods. Duty of the Land Surveyors.

The *Tide Surveyors* are to place Tide-men on board Ships at *Gravesend*, which they are to visit from time to time, and see whether the latter are upon Duty. Duty of the Tide Surveyors.

The *Land Carriage Men* are to attend at the Inns where the Carriers come in from all the Ports, in order to seize all prohibited and uncustomed Goods. Duty of Land Carriage Men.

The *Coast Waiters* have the Care of the regular shipping and landing of all Goods carried Coastwise. Duty of the Coast Waiters.

The *Register and Examiner of Debentures* is not only to keep an Account of them, but also, by comparing them with the Bills of Entry outwards, to take Care, that the Merchant be not allowed a Draw-

back of Duties for more Goods than appear to be exported.

The Manner
of passing Bills
of Entry of
Goods im-
ported.

The *Bills of Entry* of most Goods inwards pass through six Offices, (*viz.*) the Collector's, the Comptroller's, the Surveyor's, the Surveyor General's, the Computer's, and the Examiner's; and after another of these Bills, in which the Quantity of Goods must be expressed in Words in Length, and not in Figures, has been signed by one of the Commissioners and the proper Officers, it is called a *Warrant*; and is delivered by the *Warrant Keeper* to the *King's Waiters* and *Land Waiters*; being an Authority to them, to deliver the Goods entered to the Merchant.

Warrant
Keeper,
King's Waiters,
and
Landwaiters.

Duty of the
Waiters and
Jerquer.

These *Waiters* whereof two, and sometimes three, are appointed to every Ship, produce their Books to the *Jerquer*, who is a *Cheque* upon them, and to whom they deliver up these Warrants.

The Manner
of entring
Goods out-
ward.

The Masters of the Ships cannot, upon entring outwards at the Collector's Office, give an immediate Account of their Cargo (as in reporting inwards,) for at first they only enter the Ship, but the Numbers, Marks, and Quantities of the Goods, are taken afterwards, at the Searcher's Office, from the *Cocquets*, and inserted in the Reports

Reports which are from thence transmitted to the said Collector, and to which the Master then makes Oath at the Bench.

There is no Time limited for the Merchant to enter Goods outwards, or the Ship to clear after the Entry of it at the Collector's Office. No Time limited for entering Exports, or clearing outwards.

The *Bills of Entry* of such Goods outwards as pay Subsidy, pass through six Offices, (*viz.*) two under the Collector, the Comptroller's, the Surveyor's, the Surveyor General's, and the Inspector's; and the *Bills of Entry* of Goods which pass free from Duties, or of *Certificate* Goods, (which are such as are reexported) pass through five Offices, *viz.* one under the Collector, and the rest which are above mentioned; and another Copy of them, when signed by a Commissioner and the proper Officers, is called a *Cocquet*, which goes to the Searcher, as an Authority for him to suffer the Goods entered to be put on Board. The Manner of passing Bills of Entry of Goods exported; and obtaining the Cocquet.

The *Receiver General of the Customs* passes his Accounts yearly with the Auditor, to which he makes Oath before a Baron of the *Exchequer*. The *Comptrollers* of the several *Ports* give in their Ac- The Manner of accounting of the Receiver General.

counts to the Comptroller General, who also makes up, and swears before a Baron, to a yearly Account, which he transmits to the said Auditor as a Check upon the Receiver General: The Receiver General discharges himself by Payment of Debentures, which are Drawbacks for Goods reexported; Allowance for Damages, and over Entries; Portages which are Bounties to Masters of Ships for making true Reports; and Corn Debentures, for encouraging the Exportation of our Corn, when under certain Prices fixt by Law; by Payments by Treasury Warrants, or Orders from the Commissioners of the Customs; and by Tallies for Money paid into the *Exchequer*: Then he goes to the King's Remembrancer to see if there be any *Supers* upon Accounts unliquidated; then to the Treasurer's Remembrancer to see if there be any *Supers* of Debts liquidated; and then he gets his Tallies joined and goes to the Pipe, and there he has his *Quietus*; and comes back to the Treasurer's Remembrancer, takes up his *Bond*, and leaves his *Quietus* there.

There

There is a particular Comptroller on the Receiver General's Issues and Payments, who is to take Care that the Money and Bonds be weekly delivered over by the respective Collectors to the Receiver General, and that he charge himself therewith, and to examine his Payments by the Vouchers.

The Duty of the Comptroller of the Issues and Payments of the Receiver General.

To the Receiver General for the Year 1710	1710
To the Receiver General for the Year 1711	1711
To the Receiver General for the Year 1712	1712
To the Receiver General for the Year 1713	1713
To the Receiver General for the Year 1714	1714
To the Receiver General for the Year 1715	1715
To the Receiver General for the Year 1716	1716
To the Receiver General for the Year 1717	1717
To the Receiver General for the Year 1718	1718
To the Receiver General for the Year 1719	1719
To the Receiver General for the Year 1720	1720
To the Receiver General for the Year 1721	1721
To the Receiver General for the Year 1722	1722
To the Receiver General for the Year 1723	1723
To the Receiver General for the Year 1724	1724
To the Receiver General for the Year 1725	1725
To the Receiver General for the Year 1726	1726
To the Receiver General for the Year 1727	1727
To the Receiver General for the Year 1728	1728
To the Receiver General for the Year 1729	1729
To the Receiver General for the Year 1730	1730
To the Receiver General for the Year 1731	1731
To the Receiver General for the Year 1732	1732
To the Receiver General for the Year 1733	1733
To the Receiver General for the Year 1734	1734
To the Receiver General for the Year 1735	1735
To the Receiver General for the Year 1736	1736
To the Receiver General for the Year 1737	1737
To the Receiver General for the Year 1738	1738
To the Receiver General for the Year 1739	1739
To the Receiver General for the Year 1740	1740
To the Receiver General for the Year 1741	1741
To the Receiver General for the Year 1742	1742
To the Receiver General for the Year 1743	1743
To the Receiver General for the Year 1744	1744
To the Receiver General for the Year 1745	1745
To the Receiver General for the Year 1746	1746
To the Receiver General for the Year 1747	1747
To the Receiver General for the Year 1748	1748
To the Receiver General for the Year 1749	1749
To the Receiver General for the Year 1750	1750
To the Receiver General for the Year 1751	1751
To the Receiver General for the Year 1752	1752
To the Receiver General for the Year 1753	1753
To the Receiver General for the Year 1754	1754
To the Receiver General for the Year 1755	1755
To the Receiver General for the Year 1756	1756
To the Receiver General for the Year 1757	1757
To the Receiver General for the Year 1758	1758
To the Receiver General for the Year 1759	1759
To the Receiver General for the Year 1760	1760
To the Receiver General for the Year 1761	1761
To the Receiver General for the Year 1762	1762
To the Receiver General for the Year 1763	1763
To the Receiver General for the Year 1764	1764
To the Receiver General for the Year 1765	1765
To the Receiver General for the Year 1766	1766
To the Receiver General for the Year 1767	1767
To the Receiver General for the Year 1768	1768
To the Receiver General for the Year 1769	1769
To the Receiver General for the Year 1770	1770
To the Receiver General for the Year 1771	1771
To the Receiver General for the Year 1772	1772
To the Receiver General for the Year 1773	1773
To the Receiver General for the Year 1774	1774
To the Receiver General for the Year 1775	1775
To the Receiver General for the Year 1776	1776
To the Receiver General for the Year 1777	1777
To the Receiver General for the Year 1778	1778
To the Receiver General for the Year 1779	1779
To the Receiver General for the Year 1780	1780
To the Receiver General for the Year 1781	1781
To the Receiver General for the Year 1782	1782
To the Receiver General for the Year 1783	1783
To the Receiver General for the Year 1784	1784
To the Receiver General for the Year 1785	1785
To the Receiver General for the Year 1786	1786
To the Receiver General for the Year 1787	1787
To the Receiver General for the Year 1788	1788
To the Receiver General for the Year 1789	1789
To the Receiver General for the Year 1790	1790
To the Receiver General for the Year 1791	1791
To the Receiver General for the Year 1792	1792
To the Receiver General for the Year 1793	1793
To the Receiver General for the Year 1794	1794
To the Receiver General for the Year 1795	1795
To the Receiver General for the Year 1796	1796
To the Receiver General for the Year 1797	1797
To the Receiver General for the Year 1798	1798
To the Receiver General for the Year 1799	1799
To the Receiver General for the Year 1800	1800

An

An Account of the Titles
of the several Duties as
they were accounted for
by the Receiver General
of the Customs before the
Auditor 1724.

To what Service Applica-
ble, and for what Time.

Customs. — — —

Impost 1690. on Silk, &c.

Impost Wine, &c.

Impost Tobacco.

Additional Impositions.

Whale Fins.

French Duty 2d, 25 per Cent.

New Subsidy.

4 $\frac{1}{2}$ per Cent. since 29 September
1715. Enumerated Duties since
ditto.

3 s. per Chaldron on Coals.

New Duty on Candles. —

2 s. per Chaldron on Coals.

Goods exported.

Additional Duty on Candles.

New Duty on Spice and Pictures.

Additional Duty on ditto, white
Calicoes, &c.

15 l. per Cent. on Muslins.

3 s. per Chaldron on Coals since
25 March 1719.

Additional Subsidy since 8 March
1706.

$\frac{2}{3}$ Subsidy since 8 March 1711.

New Duty on Soap.

Half to Annuities for 96 Years.

Half to the Bank for ever, redeem-
able by Parliament.

To the *South-Sea* Company for
ever, redeemable by Parlia-
ment.

To the Civil List.

To Lottery 1710 for 32 Years.

For 5 Years from 1 May 1710, to
pay off 500,000 l. afterwards,
to the *South-Sea* Company.

To Lottery 1711, from 8 March
1710, for 32 Years.

For 4 Years, from 23 June 1710,
towards paying off 700,000 l.
afterwards, to the Bank for ever,
redeemable by Parliament.

To Lottery 1719, and building
Churches.

To Annuities for 98 Years, from
8 March 1706.

To the Bank for ever, redeemable
by Parliament.

To 10 l. Lottery 1712, for 32
Years.

Coals

Coals exported.	{	To Lottery 1714, for 32 Years.
Additional Duty on Soap, &c.		
New Duty 1709, on Pepper, &c.	{	To Annuities from 6 Feb. 1709, for 32 Years.
New Duty on Hides, Skins, &c.	{	To the Class Lottery 1711, from 24 June 1711, for 32 Years.
Rock Salt exported. —	{	To the same.
New Duty on Hops.		For 4 Years, from 1 June 1711, towards Payment of 180,000 <i>l</i> .
Additional Duty on Hides, Starch, Drugs, &c.	{	To Class Lottery 1712, for 32 Years.
Sail Cloth since 29 Sep. 1715.		To the Civil List.
Coinage Duty.	{	For defraying the Charge of the Mint.
New Duty on Wrought Plate.		For Payment of Annuities 6 Geo.
New Duty on Apples.	{	Towards making good the Supply granted for the Year 1722.

C A P. XVII.

Of the Revenue of Excise ; its Origin ; the Method of collecting it ; and the Duty of the several Officers employed therein.

Excise, what.

THE *Excise* is a Tax laid upon the Retailer or Consumer of any Commodity ; it is called *Excise* from the *Dutch Word Accise*, which signifies an Assessment upon any Commodity ; others derive it from the Word *Excisum*, as a Part of the Profit cut off from the whole.

Original Institution of the Excise in 1643, with the Appointment of Commissioners.

This was begun on the 11th of *September* 1643, by the long Parliament ; and eight *Commissioners of Excise* were appointed, and they were to choose their own Officers, *viz.* their Register, Collectors, Clerks, and other subordinate Officers.

Oath and Authority of Commissioners.

They were to take an Oath before the Speaker of either House ; and were to have Authority in all Parts of the City of *London* and *Westminster*, and for twelve Miles round.

They

They were to appoint in the several *Appointment and Authority of Sub-Commissioners and Auditor.*
 Districts in the Country *Sub-Commissioners*, for whom they should be answer-
 able, who were to have like Authority in their several Districts; and by that Or-
 dinance an *Auditor* was appointed, who
 was to account for the Produce of the
 Revenue to the Houses.

The sixth of *September* 1645, there *Appointment and Duty of the Comptroller.*
 was a *Comptroller* appointed to this Of-
 fice, who was a Cheque upon the Com-
 missioners and Auditor: and an Order
 was made the fourteenth of *August* 1694,
 appointing all Brewers, Distillers, &c. *Brewers, &c. to make Entries weekly.*
 weekly to make a true Entry, as soon as
 their Commodities were fit for Sale; And *Appointment of Gagers.*
 a Power was granted to the Commis-
 sioners and Sub-Commissioners to appoint
 Gagers, to inspect them: and no Victual-
 ler nor Alehouse-keeper was to brew his *Victuallers not to brew without giving Security.*
 own Drink, unless he gave Security to
 pay the Excise: Nay they went so far,
 by that Ordinance, that every House-
 keeper that brewed his own Beer, was *House-keepers to pay Excise.*
 to pay the Excise: And upon the Re-
 quest of the Commissioners, the Justices *Appointment and Duty of Assessors.*
 of the Peace were to appoint *Assessors*
 upon such House-keepers in every Hun-
 dred, who were to assess what Drink
 was spent in every Family. This was *Excise taken off from private Houses.*
 thought

thought so troublesome upon private Houses, that on the twelfth of *December* 1651, it was ordered, that no Beer or Ale should be Exciseable, but such as was brewed by Brewers, Alehouse-keepers, or Retailers.

Establishment
of the Excise
by Stat. 12
Car. 2. c. 23,
and 24.

Thus Things stood till the Restoration; and then it was not thought proper to revive the Tenures that had been lost in the Civil Wars, for that was a Yoke which could not be easily born by the Gentry of the Kingdom: And therefore, by the 12 *Car. 2. c. 23*, and 24, instead of the Tenures which were abolished, they grant 1 s. 3 d. on every Barrel of Beer and Ale exceeding the Value of 6 s. *per* Barrel, and in Proportion for Cyder and Perry, with other Proportions upon Metheglin, strong Waters, &c.

How Entries
are to be made,
and the Excise
paid by 12
Car. 2. c. 23.

The common Brewers were to enter weekly, and Innkeepers and other Retailers monthly; and on Default, the common Brewer was to forfeit 5 l. the Retailer 20 s. and upon Nonpayment within a Month after Entry, to forfeit double the Duty.

Appointment
of Commissio-
ners and Ga-
gers under
these Acts.

The Commissioners were to be appointed by the King; and the Commissioners had Power to appoint *Gagers*; and the *Gagers* might enter the Houses,
and

and make Returns to the Commissioners, or Sub-Commissioners: And if the Brewer refused to permit the Gager to enter, the Gager might forbid him to sell, and if he afterwards sold he forfeited 5*l.* and double the Value of the Duty.

The Commissioners had Authority ten Miles round *London*; and the Sub-Commissioners were to be appointed by the Crown, but yet to be subordinate to the Commissioners; two Justices of the Peace were to levy the Forfeitures, or in Default of Justices, the Sub-Commissioners to do it, with Appeal to Quarter-Sessions; and there was to be no *Certiorari*: The King had the Appointment of Commissioners, and all other Persons that he thought fit for the Government of this Revenue. This Revenue coming instead of the Wards and Liveries, it was very proper to put it under the Power of the Crown; and therefore it has been under a Government distinct from all the other Branches of the Revenue.

In Town, all the common Brewers make their Entries according to the Statute, and after such Entry, they pay within a Month; and such Entries are chequed

Authority of the Commif-
fioners and
Sub-Com-
missioners.

How Forfei-
tures are to
be levied.

The King's
Power to ap-
point Officers.

How Entries
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Officers in the
the County,
and how En-
tries are there
made.

In the Country they have now no Sub-Commissioners; but in every District there is a Gager, Collector, and a Supervisor; there is a foot Gager in Market Towns, and riding Gagers for Alehouses in the Country; the Alehousekeepers in the Country do not make Entries, except at first only when they set up to brew; and the Office-keepers at the Market Towns put such Notice of their setting up to brew upon a File. And the Reason is, because it would be an intolerable Trouble, for the Alehouse-keepers, who live at a great Distance, to come to the Market Town to enter every Brewing; therefore they give in their Entries to the Gagers, the Gager and Supervisor do both Return such Entries under their Hands.

Duty of the
Collectors,
Supervisors,
and Gagers.

Upon these the Collector receives the Payments, and keeps a Book both of the Payments and the Returns, and the original Return is given back to the Supervisor, and the Supervisor returns it to the Commissioners, to charge the Collectors.

The Method
of returning
the Collecti-
ons, and
making Visi-
tations.

The Collector returns the Money to the Receiver General; the Supervisor visits

visits the Gager; and each Gager is to keep a Book of his hourly Visitations to the Alehouses, and leave Specimens of the Hour of such Visitation of each Alehouse, in order that he may be chequed by the Supervisor: Any Supervisor may interfere with another's Jurisdiction, in order to keep one another on the Watch.

The Receiver General is appointed by the Crown, and he gives great Security for the Money received.

Appointment of the Receiver General.

The Receiver General pays the Money weekly into the Receipt of the *Exchequer*, and strikes Tallies; but the Commissioners are likewise accountable as well as the Receiver, and they make up the Account under the several Branches to which the Money is appropriated.

Duty of the Receiver General and Commissioners in receiving and paying.

The Receiver is charged on such Account, by the Comptroller, and Accountant; and the several Collectors in the Country, with the Receipt of the Money: He discharges himself by Tally, by the Allowance of Salaries, and other Incidents by Order of the Board; his Accounts are viewed by the Treasury, and annually carried to an Auditor appointed by the Crown to receive the said Account; and afterwards these Ac-

The Manner for the Receiver-General to pass his Accounts.

counts are lodged at the Pipe, and from the Auditor he has his *Quietus*, without coming to a Baron except to swear his Account; and this is by a Clause in the Statute, that gives the King a Power to appoint Officers, for the Government of this Branch of the Revenue.

APPENDIX.

A P P E N D I X,

C O N T A I N I N G

- I. *An Account* of the Origin, Progress, and Nature of the *Customs*; and other *Duties* and *Imposts*, on Goods and Merchandizes imported and exported: with an Enumeration of the several *Laws* and *Statutes* relating to them.
 - II. *An Account* of the Method of charging and collecting the *Duties* of *Excise* &c.; and of the Names and Business of some of the Officers employed therein.
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APPENDIX

CONTAINING

I. An Account of the Origin, Progress, and Decline of the Custom; and of the Duties and Duties on Goods and Merchandise imported and exported; with an Enumeration of the several Laws and Statutes relating to them.

II. An Account of the Method of charging and collecting the Duties of Excise &c.; and of the Names and Functions of some of the Officers employed therein.

APPENDIX

An Account of the Origin, Progress, and Nature, of the *Customs*; and other *Duties* and *Imposts* on Goods and Merchandizes imported and exported: with an Enumeration of the several Laws and Statutes relating to them:

Given in a Dialogue between A. and B.

A. THE Laws relating to foreign Trade, and the Duties on Goods and Merchandizes imported and exported, are so numerous; some of which have been so often continued, revived, expired, or repealed; others disused, and not being observed, grown obsolete; that it is impossible for any one, not bred up in the Practice and Business of the Custom-house, and, (as I may properly

S 3

enough

enough say,) without having served an Apprenticeship there, to be able to find them, without great Difficulty to himself, Hazard to the Revenue, and Discouragement to the fair-trading Merchant.

B. Indeed I have often thought of and pitied the fair-trading Merchants, when I have seen them come to the Custom-house, first inquiring of one, and then of another, what is the Duty upon such a Commodity, and whether such a Sort of Merchandize be prohibited; not knowing which Way to go about entering their Goods, till he had asked these and such like Questions: and I cannot see who can blame them, when they consider they lie at the Mercy of some Persons, who, (not for the Benefit of the Queen or the Nation, by discovering a Fraud to her Majesty, or by detecting a pernicious Trade to the Kingdom,) rejoice at a Merchant's making an ignorant Mistake, (which perhaps may be the undoing of the said Merchant,) that will redound to their own private Gain. But as the Acts of Parliament now are grown so voluminous, I wonder there are not more Mistakes committed, as well on the Merchants Side, as the Officers, some of which

which are very ignorant in their Business; and it is truly impossible to carry all the Laws in one's Head: therefore I could wish, some of the Officers of the Customs would be so kind to his Brother Officers and to the Merchants, as to compile an easy Method for the ready finding out the Laws that are most in Use.

A. I cannot but agree to all you say, but I fear whoever undertakes it, will find himself in such a Labyrinth, that he can never pretend to be perfect.

B. No, I find you mistake me, I know it is impossible to give a perfect Account of all the Custom Laws in the Method that I would propose; and I believe you will agree with me; but this may be done, he may hint at most of the Laws, and their Use, and also the Practicability of them; and in the reciting thereof, may intermix the Practice of the Officers of the Customs, whereto those Laws relate; and in my Judgment, the plainest and easiest Method to do this will be by Way of Question and Answer, stated between 2 Persons, as between *A.* and *B.* or *C.* and *D.*, &c.

A. Well, since we are met, to talk about this Business, nothing shall be

wanting on my Part to increase the Revenue, and to promote the Good of my Country, by encouraging the fair Trader, and exposing the contrary to the Rage of those Officers I but now mentioned: but by the Way I must acquaint you, that what we discourse of is only, *inter nos*, for our own Improvement; for a Thing of this Nature ought not to be made public, unless it be very correct; which tho' I will do my Endeavour, yet I fear there will many Mistakes happen.

B. Since it is your own good Will to undertake it, I must submit to whatever you determine in that Point, as it is only for our own Information, that we may be better able to inform any of our Brother Officers, or any Merchant that asks a Question, at any Time.

A. Agreed.—

B. Then pray inform me, what Law is the Foundation upon which the Methods of the Custom-house are built.

A. As the Revenue now is collected, the Act, intituled, *A Subsidy of Tunnage and Poundage, and other Sums of Money upon Merchandize exported and imported*, is the first Act that ought to be observed; for it contains *the Rates of Merchandize*
&c.,

&c., as they were rated and agreed on, by the Commons House of Parliament, and subscribed with the Hand of Sir Harbottle Grimston Baronet, then Speaker of the House of Commons, 12 Cha. 2. c. 4. I say that ought to be the first Act, that either the Merchant or Officer should strive to be Master of; but with this Caution, not to depend wholly upon it: altho' the aforesaid Act is the Source or Spring from whence the other Acts properly flow, as likewise the Centre to which the other Acts tend, most of them being either Regulations or Alterations of that Act, or else new Impositions or Duties, which are to be collected according to the Methods thereof.

B. What you now mention is no farther back than 12 *Cha. 2.*, which is but about 42 Years since; but I would fain know, if possible, the Foundation of the Custom-house, as well as the Law upon which the Customs are founded.

A. Upon my Word, Sir, I am afraid you ask an impossible Thing; but however, since this Discourse is for our own Information, I will not term it an impertinent Question: but I must also beg the Favour of you, to let me ask you
some

some Questions, and not be obliged to answer every one myself.

B. Aye sure Sir, and you need not doubt but I will endeavour, according to the best Capacity and Experience I have, to answer your Questions as pertinently as I can.

A. Sir, I thank you.

B. I observe in several Laws, as they are printed at large in the Statute Books, that the Customs are called by several Names, as *Subsidy*, *Customs*, *Toll*, *Impositions* and *Aids*, &c.: Pray inform me of the Distinction with which these Names were used in the aforesaid Books or Acts, since, or even before the said Statute Books, if you can oblige me so far; for it is what I have been very ambitious to know.

9 Hen. 3.

6 & 7 W. 3.

12 E. 4. c. 3.

A. *Keble's* Statutes, which begin with *Magna Charta*, and continued down to the End of the 6 & 7 *W.* 3. and were printed in two Volumes, in the Year 1694.; take the *Titles* only of the Acts which are *expired*, till the Reign of K. *James* the first: but from the *Titles* you may find the Intentions of the Parliaments in those Times; for in the Year 1472, several Ordinances were made for the true Payment of a Subsidy of Tunnage and Poundage;

Poundage: altho' before that Time, by the Record in the Exchequer, *Edward* the first had an Imposition of 1 s. upon every Tun of *Gascoigne* and *Spanish* Wine; and K. *John* had a Custom of 8 d. on a Tun of Wine in the Port of *Southampton*; but whether these two last Articles were by virtue of an Act of Parliament, or imposed by the then King's Prerogative, contrary to the Will of the Commons, I will not presume to determine.

Sir John Davis's Case, 15, 16 Ed. 1.

Argument against Sir John Davis, fo. 38.

B. And in the Statutes 14 E. 3. ca. 21. I find a Subsidy of Wool, Woolfels, and Leather; which is the first Act that mentions *Subsidy*: but yet, by what you say concerning the Duties on Wines, there were other Duties before the said Statutes, either of the Subsidy of Wools &c. or the Subsidy of Tunnage and Poundage.

A. If you would go back so far, it is as antient as *Julius Cæsar*; for *Suetonius* says, he laid the first Imposition upon foreign Merchandize: "*Peregrinarum mercium portoria primus instituit*;" and that Imposition was *oetava rerum pars*: and our Saviour commanded St. *Matthew* to follow him, when he was at the Receipt of Custom; which plainly shews

Sir John Davis, fo. 150.

Sir John Davis, ca. 10.

shews there were Customs paid in those Days: and St. *Paul* willeth every Christian to pay Custom willingly, “*reddite omnibus cui Tributum, cui Vectigal.*” But to come home to our own Land: The antient Duty called *Custom*, was that which the Merchants paid for native Commodities exported; but altho’ in the Time of *Edward* 1. the said *Custom* was paid only for Wool, Woolfels, and Leather, which in his Time was reduced to a Certainty of a demy Mark for every Sack of Wool, or every 300 Woolfels; and a Mark for every Last of Leather: yet by the Record in the Tower, 3 *Ed.* 1., the demi Mark for a Sack of Wool is there called *Nova Custuma*, which shews a plain Intimation that there were others before that Time: for *Strabo* takes Notice, that in the *Britons* Time, the said Duties were called *Magna Custuma*. But the Stat. of *Magna Charta*, which was as antient as King *John*, makes mention of antient Customs or Tolls payable upon Merchandizes; which doubtless were others than that of the demi Mark &c.; yet in Tract of Time the Custom of a demi Mark &c. has retained the Name of the *great and antient Custom*, as appears by the Exchequer Rules made by *Q. Eliz.*

Q. *Eliz.*; and I find, that Sir John Da-<sup>Sir John Da-
vis.</sup>vis, Attorney General to King James the first, who had searched a great many antient Records, says, “ The Kings of
“ England, in ancient Times, did not
“ take at first, any Rates or Sums of
“ Money, but Part of the Commodities;
“ paying for what they took a Price, as
“ themselves thought reasonable, which an-
“ tiently was called PRIZES: but that
“ prudent King, Edward the first, find-^{Edw. 1.}
“ ing this not beneficial to himself or the
“ Nation, made an Agreement with the
“ Merchants Strangers, called CHARTA^{27 Edw. 3.}
“ MERCATORIA, which was after-
“ wards confirmed by Act of Parliament,
“ and remits to them the said PRIZES,
“ as they should pay several Duties in
“ Lieu thereof; as 2 s. for every Tun of
“ Wine, called now BUTLERAGE; 3 d.
“ in the Pound upon avoir du pois out of
“ all foreign Merchandize imported, (ex-
“ cept Wines); and for our native Com-
“ modities exported, they paid 4 d. for
“ every Sack of Wool, for every 300
“ Woolfels 6 s. 4 d., and for every Last
“ of Leather a demi Mark, over and
“ above all Duties then paid by De-
“ nizons.”

B. But

B. But was not the like Exemption from *Prizes* granted to *Englishmen*, as well as Strangers; for otherwise, it seems to me, they were in worse Circumstances than the Strangers.

31 E. 3. Rot'
Parl', no. 4.

A. The *English* Merchants refused the Benefit, for it was proposed to them by *Edw. 3.*, so the King was at Liberty to continue taking *Prizes* of them as before.

B. What you mention of *St. Paul, cui Vectigal*, was of two Sorts, as appears in the Exposition of the *Roman Antiquities*: for the *uncertain Tribute*, properly called *Vectigal*, was either Impost Money, such as was collected in Haven-towns, for the Transportation of Merchants Goods; and that was called from *Portus*, PORTORIUM, and the Receivers thereof were called *Portitores*; the Wares, after this Impost-money had been paid, were sealed by the *Publicans* with a certain Kind of tempered *Chalk*:—or that Money which was paid by certain Tradesmen, for pasturing their Cattle in the *Roman* Fields; this Kind of Tribute was called *SCRIPTURA*, because the Bailiff, or Receiver of this Money, kept his Accounts in Writing. The same Author says, we must note, that these
Tributes

Tributes were required in Provinces and Countries subdued, as well as in *Rome* itself; and that altho' each Collector was distinguished by a peculiar Name, yet by a general Name all were called *Publicani*. And, if you will excuse my repeating what you have related, I will give you what I have found in several Authors concerning the antient Duties since *Magna Charta*; for the other (tho' Knowledge is no Burden) is not much material to us, being not assured, that the Duties before *Magna Charta*, were granted by Consent of Parliament. For altho' several Acts have been made against such Impositions, and it is at this Day Treason to collect any Money without Consent of Parliament; yet has it been aimed at by several Kings since King *John's* Time: for in his grand Charter, *Anno 17 Regis Johannis* (which is omitted in the Exemplification) King *John* there promises, not to raise Taxes without the Consent of the Common Council of the Realm, in these Words; viz. "*Nullum scutagium* Co. Inst. lib. 2. fo. 20. "*vel auxilium ponam, in regno nostro, nisi per commune concilium regni nostri:*" and herewith agrees the Statute of Confirmation, 25 *Ed. 1. ca. 7.*; which was granted to the Commons upon their Petition.

tion to take off the *Male tent des leynes*, viz. “ *de chescun sacke de leyne 40 s. &c.* : this was called *male tent*, or *male toll*, for the Word *Imposition* was not heard of in any Record, but King *Ed. 1.* goes farther than King *John*, for the latter promises only for himself, but King *Edward* for himself and his Heirs, viz.

25 Ed. 1.

“ *Et nous avons grant pour nous & pour nous heirs, que mes celes nes prendrons, sans lours comun assent, et leur bone*

34 E. 1.

“ *volunt :*” and in the 34th Year of the same King it is expressed more fully, viz.

“ *Nullum tallagium, vel auxilium per nos, vel Hæredes nostros, in regno nostro ponatur, seu levetur, sine voluntate et assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgensium et aliorum Liberiorum commit de regno nostro ;*” which Words

Coke's Inst.
lib. 2. fo.
533.

by a very learned Lawyer are thus explained : “ That no Subsidy, Task, Tenth, Fifteenth, Imposition, or other Aid, or Charge whatsoever, shall, by the King or his Heirs, be put or levied, without the Common Council of the Realm, (that is) by the Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgessees, and others of the Counties, that is to say, “ by

“ by Grant and common Consent in
 “ *Parliament.*” And herewith agrees
Magna Charta ca. 30., which hath been
 confirmed above 30 Times; and the Stat.
 9 *E. 3. ca. 1.* 25 *Ed. 3. Stat. 4. ca. 2.*
 And as I said before, notwithstanding all
 these Statutes and Promises, *Queen Mary*
 put an Imposition on Cloths, and in-
 flicted a Penalty of treble Custom on
 Merchants Denizens and Aliens, that did
 not bring Malmseys to the Port of *South-*
ampton; which was adjudged in the
 Exchequer Chamber, in *Queen Eli-*
zabeth's Time to be void: and *Queen*
Elizabeth run into the same Error, Co. Inst. 63;
 for she set an Imposition upon Cur-
 rans, and another Imposition of 3 s. 4 d.
 on every Hundred Weight of Allum;
 and Judgment was given against the
 Executors of *Customer Smith*, who were
 charged in a special Information for re-
 ceiving it: but King *James* the First ex-
 ceeded all his Predecessors in this Point;
 for he imposed Duties by Virtue of his
 Prerogative, which were called *Imposts* or
pretermitted Duties, almost upon all sorts
 of Merchandize imported and exported.
 To justify which Act, Sir *John Davis*
 wrote an ingenious Book, but was as in-
 T
 ingeniously

W. & M.

geniously answered by several Hands. And it was a great Article against that unhappy Prince King *Charles* the First, his raising Ship-Money without an Act of Parliament: And King *Charles* the Second was beginning, by his Proclamation, first to dispense with that wholesome (and I may say) glorious Act, the *Act of Navigation*, and by two other Proclamations for importing Spices from *Holland*: and since I am so near our Days, you will find it one of the Articles against our late King *James*, that the Collection of Money without an Act of Parliament was illegal; and I hope I have no Occasion to recite any more, for I do not remember, the late King *William* of glorious Memory was guilty of such illegal Proceedings, but was ever a religious Observer of the Rights and Liberties of the Subjects of *England*, of which I take this to be a considerable one.

Stat. 31 H. 8.
c. 8.

A. Why could not King *Charles* the Second dispense with Acts of Parliament by his Proclamation, as King *Henry* the Eighth did, for his Proclamations had the same Force as Acts of Parliament; nay it was once provided, that all “Proclamations made by the King’s High-
2 “ness,

“ nefs, with the Advice of the Honour-
“ able Privy Council, fhould be obeyed
“ and kept, as though they were made
“ by Act of Parliament.

B. It is very true, there was fuch an
Act as you mention, but it was foon
found to be of ill Confequence; for in 1 E. 6. c. 12,
the firft Year of the next King's Reign,
the faid Act was wholly repealed. And
fince we are now in that happy Confti-
tution, of doing nought but what is ju-
ftified by Act of Parliament, let us re-
cite what Grants of Customs and Subfi-
dies (for by the Statute of H. 4. they are
ufed as fynonymous) have been made 11 H. 4. c. 7.
fince *Magna Charta*.

Subfidies or Customs, taken in their
general Senfe are ^a *Cuftuma antiqua, five* ^a Co. Inf.
Magna Cuftuma, parva & nova; ^b Sub-^{lib. 2.}
fidies of Poundage; ^c Subfidies of Tun-^{b 14 E. 3.}
nage and Poundage; ^d Subfidies of Wool-^{c. 21.}
len Cloth; and under the Name of Cu-^{c 5 R. 2. c. 3.}
ftoms may be comprehended other Du-^{d 31 H. 6.}
ties, as ^e (*Impositions*), for though in ^{e 20 Car. 2.}
former Times, the faid Word ^f (*Impo-
fitions) was made ufe of to exprefs an ^{c. 1.}
evil Toll, not granted by Parliament; yet ^{f 25 E. 1.}
in later Days, it is applied to another Ufe, ^{c. 7.}
and the Commons in Parliament affem-
bled have frequently made ufe of the fame
T 2 Word;*

Word; as appears by several Acts of Parliament, by the Names of ^s *certain Impositions*, ^h *certain additional Impositions*; and such like.

^s 2 W. & M.
^{c.} 3.
^h 4 & 5 W.
& M. c. 5.

Co. Inst.
lib. 2.
Cotton's Records published by Mr. Prinn.

I have searched the Statute Book very carefully, but find, that all the Grants of Tunnage and Poundage, are not printed therein; though I hope to salve the want, by those learned Searchers into Antiquities, my Lord *Coke*, and Sir *Robert Cotton*, who have obliged the World with several antient Records; so I say, by their help, and the Statute Book, I shall be able to give a pretty exact List of the Subsidies, &c. (*viz.*)

Antiqua custuma.

The first that is taken Notice of, either by our Law Books or Parliament Rolls, is *Antiqua Custuma*.

For Wools, Woolfels, and Leather, (*id est*),

For every Sack of Wool, containing 26 Stone, and every Stone 14 Pounds, 6 s. 8 d.

For 300 Woolfels, a Demi-Mark, 6 s. 8 d.

For a Last of Leather, 13 s. 4 d.

That these antient Customs had their beginning by common Consent in Parliament, no Man will deny, that will but read the Patent: ^a *Cum praelati, magnates*

^a 1 Rot. Parl.
3 Ed. 1.

nates & tota communitas quandam novam consuetudinem nobis & hæredibus nostris de lanis, pellibus, & coriis, viz. de sacco lanæ dimid' marc', de 300 pellibus dimid' marc', & de lasto corii 13 s. 4 d.

The second is *Nova custuma*, which was questioned by the Commons; because not granted by their Consent, but by an Agreement between ^b Edward the First, and the Merchants Strangers, and is called *Charta Mercatoria*: I think it is not material to give the Charter at length, for it is printed by several Hands, particularly by the ingenious ^c Mr. Molloy; but the said Charter was afterwards confirmed by Act of Parliament, 27 E. 3. and grants the Duties following, over and above *Magna Custuma* aforementioned, (that is to say)

For every Hogshead of Wine imported

2 s. 0 d.

For every Sack of Wool exported, 3 s. 4 d.

For a Last of Hides exported, 6 s. 8 d.

For 300 Woolfels exported, 3 s. 4 d.

For every Scarlet Cloth dyed in

Grain,

2 s. 0 d.

For every other Cloth,

1 s.

For every Quintal of Wax,

1 s.

And 3 d. in the Pound upon all Goods and Merchandize exported and imported.

Petty Custom.
27 Ed. 3. c.
26.

T 3

For

Modus to rate
the 3 d.

For the *Modus* to collect the said 3 d. in the Pound, Credit is given to the Merchants, by Letters from their Principals or Partners, and if they have none, to be determined by the Oaths of the said Merchants, or their Servants.

Statutes or Re-
cords.
14 E. 3.

King *Edward* the third in the Year 1321. had a new Grant upon Wools &c. for a little more than a Year.

For every Sack of Wool 40 s.

For 300 Woolfels 40 s.

For every Last of Leather and other Merchandize 40 s.

And every Man that exported Wool, was to bring to the King's Exchange two Marks of Plate of Silver.

The first Act of Parliament that gave any Subsidy of Cloth, was to *Ed. 3. viz.* of Lieges 14 d. : of Strangers 21 d. for every Cloth of Affize; of Lieges 2 s. 4 d. of Strangers 3 s. 6 d., for every Cloth of Scarlet, *vide inter original' de Scaccario*, 24 E. 3. Rot. 13. And the Reason of granting the said Subsidy of Broad Cloth was, "*Quia jam magna pars lanæ regni nostri in eodem regno pannifici-*
"*tur, de qua custuma aliqua non est so-*
"*luta, per quod proficuum quod de cus-*
"*tumis & subsidiis lanarum, si extra*
"*dictum regnum ducerentur, percipere*
debemus,

debemus, in multo diminuuntur &c. : for that Wool was for the most Part converted into Cloth, whereby the King's Customs were much decreased. ^f In the Year 1334, the same King had another Grant of Wools &c.

Of Englishmen and Denizens.

	<i>l.</i>	<i>s.</i>	<i>d.</i>	
For every Sack of Wool,	0	10	0	Cotton's Records.
For every 300 Woolfels,	0	6	8	29 E. 3. nu.
For every Last of Leather,	0	13	4	11. 36 E. 3. nu.

Of Aliens.

For every Sack of Wool,	0	10	0	42 E. 3. nu. 9.
For 300 Woolfels,	0	10	0	43 E. 3. nu. 10.
For a Last of Leather,	1	0	0	None of these are printed in the Statute
For every Sow of Lead,	0	0	3	Books, but

Besides the said King had several the like Grants as appears by the Margin.

^g Then the same King had a Subsidy of Poundage only of 6 *d.* in the Pound, for two Years, upon Condition &c.; as also a Subsidy on Wool for two Years.

King *Richard* 2. in the Years 1379 and 1382, had the first Grant of Tunnage and Poundage added in one Act, that I can find; for besides the afore said

		s.	d.
For Poundage,	— —	0	6
For Tunnage on Wine,	—	1	6

The 20th Year of the same King, the said Grant is altered to the same, as 11 *Richard* 2. Numb. 16., which is a Subsidy on Wool &c. 12 *d.* Poundage, and 3 *s.* Tunnage, for 5 Years.

° *Henry* 4. had a Grant of Tunnage and Poundage. ° 2 *H.* 4. nu. 9. not printed.

		s.	d.
For Poundage,	—	0	8
For Tunnage on Wine,	—	2	0

° Two Years after, another Grant for 3 Years ; ° 4 *H.* 4. nu. 28. not printed.

		s.	d.
For Poundage,	— —	1	0
For Tunnage on Wines,		3	0

The said Duties were granted for several Times °, upon Condition, sometimes for one Year. ° 6 *H.* 4. n. 9. 8 *H.* 4. n. 9. 20.

9 *H.* 4. n. 26. 11 *H.* 4. n. 45. 13 *H.* n. 10. not printed.

° The same was granted to *H.* 5. for 4 Years. ° 1 *H.* 5. nu. 17. not printed.

° The like Subsidy is granted to the same King for his Life, upon Conditions &c., which was the first Grant of Tunnage ° 3 *H.* 5. n. 50. not printed.

nage and Poundage for Life, but proved a President to other Princes, as hereafter appeareth.

^c 1 H. 6. nu.

^{19.}

² H. 6. n.

^{14, 36,} not printed.

^t King *Henry* 6. had the Subsidy of Poundage and Tunnage for two Years, and in the second Year for Poundage only, for two Years &c., and 43 s. 4 d. by Strangers for a Sack of Wool.

^u 3 H. 6. n.

^{17.}

⁴ H. 6. n. ^{24.}

⁸ H. 6. n. ^{15,}

^{25.}

⁹ H. 6. nu. ^{13.}

¹⁰ H. 6. ^{12, 13.}

¹¹ H. 6. n. ^{12.}

¹⁴ H. 6.

n. ^{14.}

¹⁵ H. 6. n. ^{29.}

^w 23 H. 6.

n. ^{16.}

²⁷ H. 6. n.

^{10, 16,} not printed.

^w Then the Subsidy of Tunnage and Poundage was granted with an Alteration, *viz. ut prius* of Denizens, double of Strangers.

^x 31 H. 6. n.

^{8.} not printed.

^x Tunnage of Wine and Poundage granted to King *H.* 6. for the Term of his Life natural; which lays (besides 12 d. in the Pound on other Merchandize) 12 d. in 20 s. upon Woollen Cloths; for every Sack of Wool 43 s. 4 d.; and for 240 Woolfels 43 s. 4 d.: but the aforesaid Duty on Woollen Cloths, Wool, and Woolfels, was soon found too great; for in the same Year ^y the Parliament discharge Denizens of 10 s., Part of the 43 s. 4 d. upon Wool and Woolfels, for five

^y 31 H. 6. ca.

^{8.} printed.

five Years ; and of 12*d.* in 20*s.*, upon Woollen Cloths, for three Years.

I think it will not be amiss, to give² 12 E. 4. you Part of the Act of² Ed. 4. *verbatim*,^{ca. 3. printed.} for by that you will perceive, first the Method of granting the Subsidy of Tunnage and Poundage, which differs not much with the Method now in Use.

2dly, It gives both you and myself a Satisfaction, that there were more Grants of Tunnage and Poundage, than are printed or inserted in any of Statute Books, *viz.*

“ *Item*, Whereas in the Parliament⁴ Ed. 4. nu.
“ holden in the third Year of the Reign^{24.}
“ of our said Sovereign Lord the King,³ Ed. 4. not
“ the Commons of the same Realm of^{printed.}
“ *England*, granted to him, for the
“ Defence of the same Realm, and e-
“ specially for the Safeguard and Custo-
“ dy of the Sea, a Subsidy called *Tun-*
“ *nage*, to perceive and receive in Man-
“ ner and Form following, (that is to
“ say) 3*s.* of every Tun of Wine com-
“ ing into this Realm ; and of every
“ Tun of sweet Wine, coming into this
“ Realm of *England*, by any Merchants
“ alien, as well by the Merchants of
“ *Hans* and *Almaine*, as of any other
“ Merchants

“ Merchants Strangers, 3 s., over and
“ above the said 3 s. before granted ; to
“ have and perceive the said Subsidy,
“ yearly, from the Feast of *March*, in
“ the Year of our Lord God M.CCCC.
“ LXIV. for Term of his natural Life.
“ And moreover the said Commons, by
“ the Assent aforesaid, granted to the
“ King, for the Safeguard and Keeping
“ of the Sea, another Subsidy called
“ *Poundage*, that is to say, of all Man-
“ ner of Merchandizes, of every Mer-
“ chant Denizen and Alien, as well of
“ Merchants of *Hans* and *Almaine*, as
“ of any other Merchant Alien, car-
“ ried out of this Realm, or brought
“ into the same, by Way of Merchan-
“ dize, of the Value of 20 s., 12 d., ex-
“ cept Time whereof the Merchant
“ Strangers shall pay for *Subsidy* of the
“ Value of 20 s. 2 d., and the Mer-
“ chants Denizens 12 d. ; and all Man-
“ ner of Merchandizes of every Merchant
“ Denizens to be valued, according as
“ they did cost at their first buying, by
“ their Oaths, or Oaths of their Ser-
“ vants, Buyers of the said Merchan-
“ dizes in their Absence, or by their
“ Letters, which the same Merchants
“ have of such buying, of their Factors,
“ and

“ and in none other Manner ; all Man- Exception.
 “ ner of Woollen Cloths, made and
 “ wrought within this Realm of *Eng-*
 “ *land* by any Merchant Denizen, not
 “ being an Alien born, to be carried out
 “ of the same Realm within the Time of
 “ this Grant ; all Manner of Wools,
 “ Woolfels, and Leather, going out of
 “ the same ; and all and every Manner
 “ of Corn Flower ; and all Manner of
 “ fresh Fish, Bestaile, and Wine, com-
 “ ing into this Realm ; and all Manner
 “ of Victuals going out of this Realm,
 “ for the victualling of the Town of
 “ *Calais*, and the Marches of the same,
 “ under the King’s Obeisance ; out of
 “ this Grant always excepted : to have
 “ and perceive, yearly, the said Subsidy
 “ of Poundage, from the said first Day
 “ of *March*, during his natural Life, as
 “ in the Grant thereof made more large-
 “ ly is contained.”

Edward the Fifth is reckoned in the Baker’s Chro-
 Table of our Kings of *England*, but he nicles.
 was only proclaimed, and never crowned,
 nor was any Grant of Aids or Taxes
 made in his Time.

Neither had *Richard* the Third any
 Grant of this Nature,

But

^a Rot. Parl.¹ H. 7.

not printed.

But ^a at the Parliament holden in the first Year of the Reign of *Henry* the Seventh, a like Act was made, for the Grant of the *Subsidies* of *Tunnage* and *Poundage* to him for his Life; and in ^b 7 H. 7. c. 7. the seventh Year of his Reign, there was a new Custom laid upon a But of Malmsey of 18 s., over and above the former Duties, to be paid by Merchant Strangers, during the Payment of four Ducats imposed by the *Venetians* upon *Englishmen*.

^c Rot. Parl.¹ H. 8. not printed.

^c King *Henry* the Eighth had the like Subsidy of *Tunnage* and *Poundage* for his Life, at a Parliament holden the first Year of his Reign.

^d 1 Ed. 6.

c. 13. printed.

^d In the Year 1547., King *Edward* the Sixth had the Subsidy of *Tunnage* and *Poundage* granted during his Life, with Exception, and some Alterations, viz.

Rhenish Wine to pay 12 d. the Aum imported.

Exported by English or Denizens.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a Sack of Wool,	1	13	4
For 240 Woolfels,	1	13	4
For a Last of Leather, Hides			
and Backs,	3	6	8

By

By Aliens.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a Sack of Wool,	3	6	8
For 240 Woolfels,	3	6	8
For a Last of Leather Hides and Backs,	3	13	4

^a Anno 1556, the same granted to ^a 1 M. c. 18.
Queen Mary during her Life. printed.

^b Queen Elizabeth had the same du- ^b 1 Eliz. c. 20.
ring her natural Life. printed.

^c The same Subsidy of Tunnage and ^c 1 J. 1. c. 33.
Poundage granted to King James the printed.
First, from the 18th of March 1602,
during his natural Life.

King Charles the First had the same
Grant, ^d seven times in two Years, but ^d 16 Car. 1.
with Limitations. And during the Time c. 8, 12, 22,
of the Common Wealth of England the 25, 29, 31,
said Grant was several Times altered: 36. all printed.

but that Time of *Interregnum* is not
taken Notice of in the Statute Books,
for there are no Acts of the Usurper
Oliver printed with the other Acts. But
after the 17 Car. 1., the Acts commence
and begin with the Restoration of Car. 2.
and in the twelfth Year of his Reign,
there is granted to him, during his Life,

^e a Subsidy of Tunnage and Poundage, ^e 12 Car. 2.
and c. 4.

and other Sums of Money payable upon Merchandizes exported and imported: but with several Additions, &c.; as appears more fully by the said Act, and by the Book of Rates. We shall have more Occasion to refer to the particular Clauses in the said Act, when we are discoursing about the Practice of the Custom-house, this at present being only the Theory.

^a 1 J. 2. c. 1.

King *James* the Second had the same Grant for his Life; but upon his abdicating the Realm of *England*, it was

^b 1 W. & M. c. 14.

^b repealed, and granted to King *William* and Queen *Mary* to the 25th of *December*

^c 1 W. & M. sess. 2. c. 3.

1689. then granted to the 25th of *December* 1690.; and from thence conti-

^d 2 W. & M. sess. 1. c. 4.

nued for ^d four Years; and from thence continued ^e for five Years; and after

^e 6 W. & M. sess. 6. c. 1.

that, was amongst several other Acts,

^f 8 & 9 W. 3. c. 21.

thrown into the general Mortgage for ^f making good the Deficiencies of several Funds, which are to continue till the first of *August* 1706.

And now I have recounted all or most of the Grants of Tunnage and Poundage since *Magna Charta*, the several Impositions may be omitted in this Place; for as I said before, concerning the Act of 12 *Car.* 2., we shall have Occasion to make

make use of them in their proper Places.

A. I am of your Mind, therefore it will be but Tautology to repeat them here and there too. But there are two Things not improper to be mentioned here, which are the *Place* where the said *Customs* have been and are collected; and the *Managers* and *Officers* that are intrusted with the Collection thereof. — And first as to the *Place* where the said Duty or Customs were collected: the Book called *Lex Mercatoria* says, the Customs were paid at the Staple; and this appears more fully by *Stow*, in his *Survey of London*, who says, that the *Thronage-house*, which was a Place for weighing of Wools, was kept at *Woolchurch Haw* in *Wallbrook Ward*; but in the Reign of *Richard* the Second, in the Year 1385, *John Churchman*, then Sheriff of *London*, built a *Thronage-house*, which was likewise the Custom-house, upon Wool-Key; and the King's Customer, &c. had their Seats in the said house: the King paid the said *John*, by the Hand of his Customer, ^a 40 s. per ^a *Stow*, fo. *Annum*, during the Life of the said ^{142.} *John*. In the Year 1666., the old Custom-house was burnt; this I presume was the *Thronage-house* above mentioned;

U for

for I do not find any Relation of any other but during the building of a new one, which is the present Custom-house: there is an ancient House in *Mark-lane*, almost against the End of *Crutched Fryers*, which the Officers made use of for that Time.

Secondly, there is no Doubt but the Officers called *Customers* are as antient as the Customs paid; but the Customs and Duties were under other Management in former Times, as well as now, even in King *Edward* the Third's Time, as *Farmers*, *Customers*, *Collectors*, *Comptrollers*, *Searchers*, *Surveyors*, and other Officers; but ever since the Year ———, when King *Charles* the Second took them from the Farmers, the Customs and other Duties have been under the Management of Commissioners, who at present are seven in Number, and have the whole Direction of them.

An

A N
A C C O U N T
O F

The Method of charging and collecting the Duties of Excise, &c.; and of the Names and Business of some of the Officers employed therein.

AN
ACCOUNT

OF
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HE who would be an *Excise-Officer*, Certificate for obtaining an Order to be instructed in the Excise. must procure a *Certificate*, that he is above 21, and under 30 Years of Age; —that he understands the four first Rules of Arithmetick; —that he is of the Communion of the Church of *England*; —how he has been employed, and what Business he followed; —that he is not incumbered with Debts; —whether single or married; and if married, how many Children he has, for if he has above two, he cannot, by the Rules of the Office, be admitted.

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After he is thus certified for, and until he is employed, he is called an *Expectant*, being to wait till a Vacancy happens.

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Gagers, or
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In the Excise Language, the Excise upon Beer and Ale is called the *Brewery*; the Excise upon Spirits, strong Waters,

Brewery, Dis-
tillery, &c.

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Duties on low Wines, Cyder, &c. reckoned Part of the Distillery.

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The Limits of the chief Office in London.

London, Westminster, and all other Places within the weekly Bills of Mortality, are within the Limits of the chief Office in *London*.

Divisions and Officers of the London Brewery.

As to the *Brewery Duties*, *London*, and the other Places within the Limits of the chief Office, are laid into four Divisions; of which there are four *general Surveyors*, and under them 12 other Surveyors, and under them a great many Gagers or surveying Officers; the said four general Surveyors have also a Superintendency of all other Duties in their respec-

respective Divisions, except the Distillery.

As to the *Distillery Duties*, *London*, and the other Places within the Limits of the chief Office, are laid into three Divisions; of which there are *three general Surveyors*, and under them *six Surveyors of the Duties on low Wines and Spirits*, from time to time distilled; and eight other *Surveyors of the Stocks of Brandy &c.*, which is reckoned as belonging to the Distillery; under these Surveyors are Abundance of Gagers or surveying Officers.

Divisions and Officers of the London Distillery.

London &c., as to the Duties on Candles, Sope, printed Linens, and Paper painted, &c.; Starch, Wire, and Plate, &c. are under the 4 general *Brewery Surveyors*; besides which there are eight under Surveyors of these Duties, and under them Abundance of Gagers and surveying Officers.

Officers in London &c. of the Duties on Candles, Sope, painted Linens and Paper, Starch, Wire, and Plate.

The rest of the Kingdom, and *Wales*, is divided into 49 *Collections*, some called by the Names of particular Counties, others by the Names of great Towns, where one County is divided into several Collections, or where a Collection comprehends the contiguous Parts of several Counties, as it sometimes happens.

Division of the rest of the Kingdom, and Wales, into Collections.

Every

Those Col-
lections into
Districts.

Every Collection is subdivided into *Districts*, more or fewer; according to the Number of Persons within those Districts liable to Duties; and according to their being more remote or near; and in Proportion to the *Quantum* of the Duties arising within each District; which are called by the Name of the chief Market Town in each District.

Those Dis-
tricts into
Foot-walks
and out-
rides.

The Market Towns in each District, and the Villages and little Towns nearest thereto, are laid into *Foot-walks*, distinguished and called the first, second, or third *Division* of such a Market Town: and the Villages and little Towns remote from Market Towns, are laid into *out-rides*, distinguished and called the first, second, or third *out-ride* of such a Market Town; which are more or fewer, according as before, to the Number of Persons liable to Duties, and their remoteness or nearness, and the Quantities of the Duties &c.

Collectors,
Supervisors,
Gagers.

Of every Collection there is a *Collector*, and of every District a *Supervisor*, and of every Foot-walk and out-ride a *Gager* or *surveying Officer*.

The Business
of the Gager,
or Officer, in
surveying.

The Kingdom being thus laid out, the first Step is the *charging* the Parties with these Duties; which is performed by the

the *Gagers* or *surveying Officers*; who are continually going to the Brew-houses, Malt-houses, and other Houses, and Work-houses, of the Persons under their Surveys: and each Officer having a particular Book for each Duty under his Survey, and the Names of the several Persons under his Survey being therein entered; when he comes to a Brew-house, or Malt-house, &c., he in his Book, and a Specimen Paper (always remaining at each House,) first sets down the Minute of his coming thither, and if he finds nothing in Operation, then he writes *silent*; but if he finds any thing in Operation, he, by gaging or otherwise, takes an Account thereof; and immediately minutes down in his Book, and also in the Specimen Paper, the Account so taken; and in like Manner proceeds to, and at, the next House under his Survey, and so goes on for a Month in *London*, and for six Weeks in the Country.

At the End of every Month, or six Weeks, every Officer, from the Accounts so entered in his Book or Books, draws out an Account of the respective Times of brewing, or of making Malt or Candles, by each respective Person

making out
the Officers
Accounts and
Vouchers.

I

under

under his Survey ; and of the respective Quantities thereof : putting the respective Accounts of the several Brewers under his Survey in one Paper or Account by themselves ; and the respective Accounts of the several Maltsters under his Survey in another Paper, or Account by themselves ; and so of the rest : and having so done, these Accounts, so drawn from the Books, being therewith compared and examined, by the Officer and his Surveyor or Supervisor, are signed by both of them, and are then called the *Brewery Voucher*, or the *Malt or Candle Voucher* &c.

Reports or
Returns of the
Officers.

These are the Reports or Returns of the Officers, mentioned in the Excise Acts ; and which, by the said Acts, are declared to be Charges on the respective Persons liable to Duties.

The Officers
Books, and
the Vouchers
sent up to be
compared and
examined.

The Produce of these Duties depending so much on the Officers Entries in their Books, and on the Vouchers drawn from thence ; the said Books, after making the said Vouchers, are sent up to the *Examiners* at the chief Office, to be there compared with the Vouchers, which also are sent thither, as hereafter is mentioned : and if upon such Examination, any Omission or Error is found, the
same

same are reported to the Commissioners; who order the Supervisor, or Officer, or both, to be either admonished, reprimanded, or discharged, as the Nature of the Fault requires.

But to prevent as much as possible any such Omission or Error; at great Brew-houses, either in *London*, or any other Place where there are considerable Brew-ers; several Officers are appointed to attend, and take Accounts at the same Brew-houses, and to follow one another at certain Hours, in Succession one after another; so that each following Officer's Survey is a Cheque upon the preceding Officer's Survey: for all their Books being produced when the Voucher is to be made up, the Surveyor thereby sees the several Gages and Accounts taken by each Officer, in Succession, one after another, and thereby discovers if any have been negligent, or have taken wrong Gages or Accounts.

Several Gagers in Succession, as a Cheque on one another, are continually attending at great Brew-houses.

To prevent Frauds, at some of the very great Brew-houses, the Officers in Succession relieve one another Day and Night, one not going off till another comes on; so that the Year round, in some great Brew-houses, one Officer or another is attending Day and Night; and in

An Officer attending Day and Night at very great Brew-houses and Distilleries.

in Cases of suspecting considerable Distillers, the like Precaution is used as to Distillers.

London Vouchers at the Office delivered to the Accountants.

These Vouchers for the *London* Brewery, Distillery, and Candle, &c. Duties, when thus made up, examined and settled, are delivered in at the chief Excise Office, to the respective Accountants there of the Brewery, Distillery, Candles, &c.; who in Books enter the Charges made upon each particular Person, to be ready against he brings his Money to the chief Office, where it is to be paid to the Cashier.

Country Vouchers, after Entry in the Collector's Book, and Receipt of the Duties there, sent up to the chief Office.

Vouchers made up in the Country in the same Manner by the Officers and their Supervisor, are delivered to the Collector; who every six Weeks comes to the Excise Office in every Market Town in his Collection, there to receive the Duty of each Person indebted for Duty, who by the Excise Acts are not to go farther than the next Market Town to pay their Duties: these Vouchers, being entered in the Collector's Book, are sent up to the chief Office, to cheque the Collector's Account.

The Parties are to charge themselves by their own Entries monthly.

For further securing these Duties, the Excise Acts require Persons liable thereto to charge themselves; by making, at the next

next Excise Office, monthly Entries of their Liquors and Commodities, chargeable with these Duties: and such Entries are constantly made at the chief Office, by all Persons within the Limits thereof liable to Duties: but the Duties of many in the Country being very inconsiderable, and they often living remote from the Excise Offices, and many of them being illiterate, and not capable of writing, these Sorts of Entries in the Country are not often insisted on.

But the Entries or Notices of the Names and Places of Abode of the respective Persons liable to these Duties, and of their respective Workhouses, Storehouses, &c., and other Utensils, used in and for the Liquors, or other Commodities liable to Duties, ought never to be omitted, without being severely punished.

Other Entries never to be omitted.

The Business of Gagers or surveying Officers is already mentioned; the Business of *Surveyors* or *Supervisors* is, to be continually surveying the Houses &c. of the Persons within their respective Districts liable to Duties; and to take, and in their Books to enter, Accounts of what they find there in Operation; and likewise to watch, and see whether the Officers

The Business of a Surveyor or Supervisor.

Surveyors to
make Diaries,
and transmit
them to the
chief Office.

Officers duly make their Surveys, and make due Entries thereof in their Books, and in the Specimen Papers: each Surveyor or Supervisor is in his own Book to enter what himself does, each Day and Part thereof; and also to set down the Behaviour, good or bad; the Diligence or Negligence, of the several Officers of his District; and at the End of every six Weeks, to draw out a *Diary* of every Day's Business, and of the Remarks made each Day of the several Officers in his District, and to transmit such *Diary*, at the End of every six Weeks, to the chief Officer.

The Duty and
Authority of
the Commis-
sioners in re-
primanding,
and otherwise
punishing Of-
ficers guilty of
Neglect, with
the Manner
thereof.

Each *Commissioner* takes and peruses a Proportion of these Diaries, and when he meets with any remarkable Complaint against any Officer, he communicates it to the rest; who thereupon come to an Agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small Faults, Officers are *admonished*; for great ones, *reprimanded*; for greater *reduced*; but for the greatest they are *discharged*. The Commissioner, who peruses the *Diary*, writes in the Margin *admonish*, or *reprimand*, &c., as is agreed on by the Board.

These

These *Diaries*, after having been thus written upon, are delivered to the *Clerk of the Diaries*, who in a Book, called the *Reprimand Book*, places the Admonishments &c., Reprimands &c., to each Officer's Account; and writes every Officer Word thereof; which Reprimand Book is resorted to upon discovering new Faults, and if it is there found, that the Officer has before been admonished and reprimanded so often, that there are no Hopes of his amending, he then is discharged. The said Book is likewise resorted to, when Application is made for advancing or preferring an Officer into a better Post. Frequent Admonitions or Reprimands are a Bar to Preferment, unless they are of old standing; but if for three Years last, before the Time of applying for Advancement, he stands pretty clear of Admonishments and Reprimands, in such Cases, Admonishments and Reprimands of elder Date are not much regarded.

The *Collector's* Business is, every six Weeks to go his Rounds; and in Intervals of Rounds, to be assisting in prosecuting Offenders before Justices: he also is to peruse the Supervisors Diaries, and where he finds an Officer complained of,

is to examine him and the Supervisor, and having heard both, is in the Margin to write his Opinion of each Fact; he is also to have an Eye how the Supervisors and Officers of his Collection perform their Duties; he, from the Vouchers, transcribes into his Book, the Charge on each particular Person in his Collection; and every six Weeks goes his *Round*, viz. to the Excise Office in every Market Town in his Collection, and receives the Duties due from each Person in his Collection, and either prosecutes, or orders the Supervisor to prosecute, the Defaulters, till the Arrears are paid.

How Collectors are to remit their Collections.

The *Money he receives* on his Round, is not to remain in his Hands until the Round is over; but as he, upon his Round, receives, so, from time to time, he is to remit what he has received, and at the End of the Round, to remit the Ballance of his Account of each Round.

The Manner of reducing Officers for Faults.

For Faults, *Officers* are *reduced*, either to be only Assistants, or from Foot-walks to Out-rides, which are worse, because of the Charge of keeping an Horse: *Supervisors* are *reduced* to be again only Officers: and *Collectors* are *reduced* to be Supervisors.

In

In some Instances, *discharged Officers*, The Manner of discharging and restoring after having for a competent Time been Officers. thereby kept out of Pay, are again *re-stored*: but if twice discharged, are never again restored; unless one of the Discharges afterwards appears to have been occasioned upon a Misrepresentation of the Truth of the Case.

Besides all which, a *particular Com-* Sometimes a Commissioner goes personally into some *missioner* goes now and then into one, two, or more Collections, carrying with him three or four Examiners; and upon the Spot, examines into the Behaviour of Collectors, Supervisors, and Officers; and if Occasion, hears them Face to Face: because private Persons, knowing of any Fraud or Frauds, carrying or carried on, to the Prejudice of the Revenue, may be inclined to discover the same to a Commissioner, rather than to any Officer or Officers.

Pursuant to the Excise Acts, there Country Ex- is in every Market Town an cise Offices and Office *Excise Office*, and an Officer called an Keepers. *Office Keeper*, who, by a Commission from the Commissioners, is constituted *Office Keeper*; all his Business is, to receive, file, and keep all Entries, of Persons within the Limits of that Office; of their respective Names and Places of
X 2 Abode;

Abode; of the respective Trades or Businesses they follow; and of the several Workhouses, Warehouses, Storehouses, Cellars, Rooms, and Places, and of all the Utensils they respectively make use of in their Trades &c. Were it not for such Entries as these, Persons in By-places might carry on Trades without Officers knowing any thing thereof, or ever charging them with the Duties they ought to pay. Therefore the omitting to make such Entries as these, ought to be severely punished: but the Traders omitting to charge themselves, by making monthly Entries of their respective Goods and Commodities, in the Country, is not (as before is said) often insisted on.

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The Duties on low Wines, or the first Extraction from which Spirits and strong Waters are afterwards made, were not imposed by the first Excise Acts; but were granted by subsequent Excise Acts; but being Part of the *Distillery*, and the Duties upon Cyder, Perry, Mead, and Vinegar, not being very considerable, they are all reckoned and called the *Distillery*.

The Limits of the chief Office in London.

London, Westminster, and all other Places within the weekly Bills of Mortality, are within the Limits of the chief Office in *London*.

Divisions and Officers of the London Brewery.

As to the *Brewery Duties*, *London*, and the other Places within the Limits of the chief Office, are laid into four Divisions; of which there are four *general Surveyors*, and under them 12 other Surveyors, and under them a great many Gagers or surveying Officers; the said four general Surveyors have also a Superintendency of all other Duties in their respec-

respective Divisions, except the Distillery.

As to the *Distillery* Duties, *London*, and the other Places within the Limits of the chief Office, are laid into three Divisions; of which there are *three general Surveyors*, and under them *six Surveyors of the Duties on low Wines and Spirits*, from time to time distilled; and eight other *Surveyors of the Stocks of Brandy &c.*, which is reckoned as belonging to the Distillery; under these Surveyors are Abundance of Gagers or surveying Officers.

London &c., as to the Duties on Candles, Sope, printed Linens, and Paper painted, &c.; Starch, Wire, and Plate, &c. are under the 4 general *Brewery Surveyors*; besides which there are eight under Surveyors of these Duties, and under them Abundance of Gagers and surveying Officers.

The rest of the Kingdom, and *Wales*, is divided into 49 *Collections*, some called by the Names of particular Counties, others by the Names of great Towns, where one County is divided into several *Collections*, or where a *Collection* comprehends the contiguous Parts of several Counties, as it sometimes happens.

Every

Divisions and Officers of the London Distillery.

Officers in London &c. of the Duties on Candles, Sope, painted Linens and Paper, Starch, Wire, and Plate.

Division of the rest of the Kingdom, and Wales, into Collections.

Those Col-
lections into
Districts.

Every Collection is subdivided into *Districts*, more or fewer; according to the Number of Persons within those Districts liable to Duties; and according to their being more remote or near; and in Proportion to the *Quantum* of the Duties arising within each District; which are called by the Name of the chief Market Town in each District.

Those Dis-
tricts into
Foot-walks
and out-
rides.

The Market Towns in each District, and the Villages and little Towns nearest thereto, are laid into *Foot-walks*, distinguished and called the first, second, or third *Division* of such a Market Town: and the Villages and little Towns remote from Market Towns, are laid into *out-rides*, distinguished and called the first, second, or third *out-ride* of such a Market Town; which are more or fewer, according as before, to the Number of Persons liable to Duties, and their remoteness or nearness, and the Quantities of the Duties &c.

Collectors,
Supervisors,
Gagers.

Of every Collection there is a *Collector*, and of every District a *Supervisor*, and of every Foot-walk and out-ride a *Gager* or *surveying Officer*.

The Business
of the Gager,
or Officer, in
surveying.

The Kingdom being thus laid out, the first Step is the *charging* the Parties with these Duties; which is performed by the

the *Gagers* or *surveying Officers*; who are continually going to the Brew-houses, Malt-houses, and other Houses, and Work-houses, of the Persons under their Surveys: and each Officer having a particular Book for each Duty under his Survey, and the Names of the several Persons under his Survey being therein entered; when he comes to a Brew-house, or Malt-house, &c., he in his Book, and a Specimen Paper (always remaining at each House,) first sets down the Minute of his coming thither, and if he finds nothing in Operation, then he writes *silent*; but if he finds any thing in Operation, he, by gaging or otherwise, takes an Account thereof; and immediately minutes down in his Book, and also in the Specimen Paper, the Account so taken; and in like Manner proceeds to, and at, the next House under his Survey, and so goes on for a Month in *London*, and for six Weeks in the Country.

At the End of every Month, or six Weeks, every Officer, from the Accounts so entered in his Book or Books, draws out an Account of the respective Times of brewing, or of making Malt or Candles, by each respective Person

The Officers
Books, and
the Vouchers
sent up to be
compared and
examined

Manner of
making out
the Officers
Accounts and
Vouchers.

I

under

under his Survey ; and of the respective Quantities thereof : putting the respective Accounts of the several Brewers under his Survey in one Paper or Account by themselves ; and the respective Accounts of the several Maltsters under his Survey in another Paper, or Account by themselves ; and so of the rest : and having so done, these Accounts, so drawn from the Books, being therewith compared and examined, by the Officer and his Surveyor or Supervisor, are signed by both of them, and are then called the *Brewery Voucher*, or the *Malt or Candle Voucher* &c.

Reports or
Returns of the
Officers.

These are the Reports or Returns of the Officers, mentioned in the Excise Acts ; and which, by the said Acts, are declared to be Charges on the respective Persons liable to Duties.

The Officers
Books, and
the Vouchers
sent up to be
compared and
examined.

The Produce of these Duties depending so much on the Officers Entries in their Books, and on the Vouchers drawn from thence ; the said Books, after making the said Vouchers, are sent up to the *Examiners* at the chief Office, to be there compared with the Vouchers, which also are sent thither, as hereafter is mentioned : and if upon such Examination, any Omission or Error is found, the
same

same are reported to the Commissioners; who order the Supervisor, or Officer, or both, to be either admonished, reprimanded, or discharged, as the Nature of the Fault requires.

But to prevent as much as possible any such Omission or Error; at great Brew-houses, either in *London*, or any other Place where there are considerable Brewers; several Officers are appointed to attend, and take Accounts at the same Brewhouses, and to follow one another at certain Hours, in Succession one after another; so that each following Officer's Survey is a Cheque upon the preceding Officer's Survey: for all their Books being produced when the Voucher is to be made up, the Surveyor thereby sees the several Gages and Accounts taken by each Officer, in Succession, one after another, and thereby discovers if any have been negligent, or have taken wrong Gages or Accounts.

Several Gagers in Succession, as a Cheque on one another, are continually attending at great Brew-houses.

To prevent Frauds, at some of the very great Brewhouses, the Officers in Succession relieve one another Day and Night, one not going off till another comes on; so that the Year round, in some great Brewhouses, one Officer or another is attending Day and Night; and in

An Officer attending Day and Night at very great Brewhouses and Distilleries.

in Cases of suspecting considerable Distillers, the like Precaution is used as to Distillers.

London Vouchers at the Office delivered to the Accountants.

These Vouchers for the *London* Brewery, Distillery, and Candle, &c. Duties, when thus made up, examined and settled, are delivered in at the chief Excise Office, to the respective Accountants there of the Brewery, Distillery, Candles, &c.; who in Books enter the Charges made upon each particular Person, to be ready against he brings his Money to the chief Office, where it is to be paid to the Cashier.

Country Vouchers, after Entry in the Collector's Book, and Receipt of the Duties there, sent up to the chief Office.

Vouchers made up in the Country in the same Manner by the Officers and their Supervisor, are delivered to the Collector; who every six Weeks comes to the Excise Office in every Market Town in his Collection, there to receive the Duty of each Person indebted for Duty, who by the Excise Acts are not to go farther than the next Market Town to pay their Duties: these Vouchers, being entered in the Collector's Book, are sent up to the chief Office, to cheque the Collector's Account.

The Parties are to charge themselves by their own Entries monthly.

For further securing these Duties, the Excise Acts require Persons liable thereto to charge themselves; by making, at the next

next Excise Office, monthly Entries of their Liquors and Commodities, chargeable with these Duties : and such Entries are constantly made at the chief Office, by all Persons within the Limits thereof liable to Duties : but the Duties of many in the Country being very inconsiderable, and they often living remote from the Excise Offices, and many of them being illiterate, and not capable of writing, these Sorts of Entries in the Country are not often insisted on.

But the Entries or Notices of the Names and Places of Abode of the respective Persons liable to these Duties, and of their respective Workhouses, Storehouses, &c., and other Utensils, used in and for the Liquors, or other Commodities liable to Duties, ought never to be omitted, without being severely punished.

Other Entries
never to be
omitted.

The Business of Gagers or surveying Officers is already mentioned ; the Business of *Surveyors* or *Supervisors* is, to be continually surveying the Houses &c. of the Persons within their respective Districts liable to Duties ; and to take, and in their Books to enter, Accounts of what they find there in Operation ; and likewise to watch, and see whether the Officers

The Business
of a Surveyor
or Supervisor.

Surveyors to
make Diaries,
and transmit
them to the
chief Office.

Officers duly make their Surveys, and make due Entries thereof in their Books, and in the Specimen Papers: each *Surveyor* or *Supervisor* is in his own Book to enter what himself does, each Day and Part thereof; and also to set down the Behaviour, good or bad; the Diligence or Negligence, of the several Officers of his District; and at the End of every six Weeks, to draw out a *Diary* of every Day's Business, and of the Remarks made each Day of the several Officers in his District, and to transmit such *Diary*, at the End of every six Weeks, to the chief Officer.

The Duty and
Authority of
the Commis-
sioners in re-
primanding,
and otherwise
punishing Of-
ficers guilty of
Neglect, with
the Manner
thereof.

Each *Commissioner* takes and peruses a Proportion of these Diaries, and when he meets with any remarkable Complaint against any Officer, he communicates it to the rest; who thereupon come to an Agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small Faults, Officers are *admonished*; for great ones, *reprimanded*; for greater *reduced*; but for the greatest they are *discharged*. The Commissioner, who peruses the *Diary*, writes in the Margin *admonish*, or *reprimand*, &c., as is agreed on by the Board.

These

These *Diaries*, after having been thus written upon, are delivered to the *Clerk of the Diaries*, who in a Book, called the *Reprimand Book*, places the Admonishments &c., Reprimands &c., to each Officer's Account; and writes every Officer Word thereof; which Reprimand Book is resorted to upon discovering new Faults, and if it is there found, that the Officer has before been admonished and reprimanded so often, that there are no Hopes of his amending, he then is discharged. The said Book is likewise resorted to, when Application is made for advancing or preferring an Officer into a better Post. Frequent Admonitions or Reprimands are a Bar to Preferment, unless they are of old standing; but if for three Years last, before the Time of applying for Advancement, he stands pretty clear of Admonishments and Reprimands, in such Cases, Admonishments and Reprimands of elder Date are not much regarded.

The *Collector's* Business is, every six Weeks to go his Rounds; and in Intervals of Rounds, to be assisting in prosecuting Offenders before Justices: he also is to peruse the Supervisors Diaries, and where he finds an Officer complained of,

is to examine him and the Supervisor, and having heard both, is in the Margin to write his Opinion of each Fact; he is also to have an Eye how the Supervisors and Officers of his Collection perform their Duties; he, from the Vouchers, transcribes into his Book, the Charge on each particular Person in his Collection; and every six Weeks goes his *Round*, viz. to the Excise Office in every Market Town in his Collection, and receives the Duties due from each Person in his Collection, and either prosecutes, or orders the Supervisor to prosecute, the Defaulters, till the Arrears are paid.

How Collectors are to remit their Collections.

The *Money* he receives on his Round, is not to remain in his Hands until the Round is over; but as he, upon his Round, receives, so, from time to time, he is to remit what he has received, and at the End of the Round, to remit the Ballance of his Account of each Round.

The Manner of reducing Officers for Faults.

For Faults, *Officers* are reduced, either to be only Assistants, or from Footwalks to Out-rides, which are worse, because of the Charge of keeping an Horse: *Supervisors* are reduced to be again only Officers: and *Collectors* are reduced to be Supervisors.

In

In some Instances, *discharged Officers*, The Manner of discharging and restoring after having for a competent Time been thereby kept out of Pay, are again *re-Officers*. *stored*: but if twice discharged, are never again restored; unless one of the Discharges afterwards appears to have been occasioned upon a Misrepresentation of the Truth of the Case.

Besides all which, a *particular Com-* Sometimes a *missioner* goes now and then into one, Commissioner goes personally into some two, or more Collections, carrying with him three or four Examiners; and upon Collections. the Spot, examines into the Behaviour of Collectors, Supervisors, and Officers; and if Occasion, hears them Face to Face: because private Persons, knowing of any Fraud or Frauds, carrying or carried on, to the Prejudice of the Revenue, may be inclined to discover the same to a Commissioner, rather than to any Officer or Officers.

Pursuant to the Excise Acts, there Country Ex- is in every Market Town an cise Offices and Office Excise Office, and an Officer called an Keepers. *Office Keeper*, who, by a Commission from the Commissioners, is constituted *Office Keeper*; all his Business is, to receive, file, and keep all Entries, of Persons within the Limits of that Office; of their respective Names and Places of
X 2 Abode;

Abode; of the respective Trades or Businesses they follow; and of the several Workhouses, Warehouses, Storehouses, Cellars, Rooms, and Places, and of all the Utensils they respectively make use of in their Trades &c. Were it not for such Entries as these, Persons in By-places might carry on Trades without Officers knowing any thing thereof, or ever charging them with the Duties they ought to pay. Therefore the omitting to make such Entries as these, ought to be severely punished: but the Traders omitting to charge themselves, by making monthly Entries of their respective Goods and Commodities, in the Country, is not (as before is said) often insisted on.

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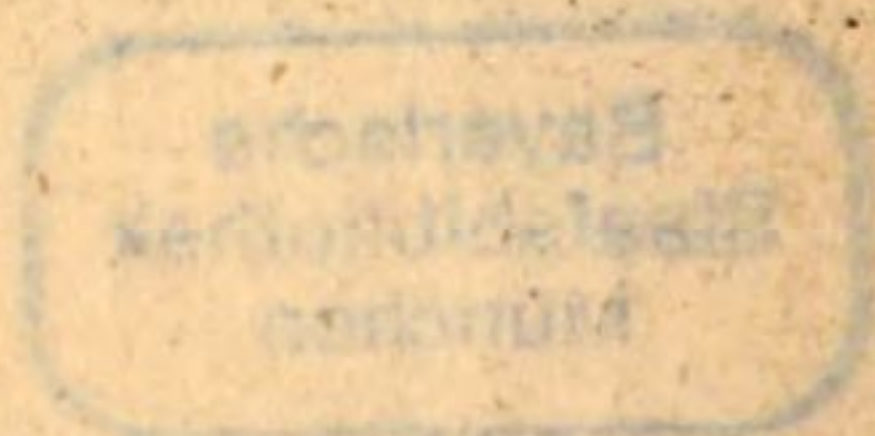
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